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"The law is the last interpretation of the law given by the last Judge." **—Anon.**

"Precedents keep the law predictable and so more or less ascertainable." **—Lord Devlin**

"There is no such thing as a judicial precedent on facts though counsel, and even judges, are sometimes prone to argue and to act as if they were."**—Bose, J., (1955) 2 SCR 1140, 1169**

"The law declared by the Supreme Court is the law of the land; it is precedent for itself and for all the courts/tribunals and authorities in India."**—Syed Shah Mohammed Quadri, J., (2002) 4 SCC 388**

"The better wisdom of the Court below must yield to the higher wisdom of the Court above." **—O. Chinnappa Reddy, J., (1985) 1 SCC 260, 268**

"... the judicial system only works if someone is allowed to have the last word and if that last word, once spoken, is loyally accepted." **—Lord Diplock, (1972) 1 All ER 801, 874**

"Most of the decisions of the Supreme Court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because in doing so they embody a declaration of law operating as a binding principle in future cases." **—N. Santosh Hegde, J., (2002) 4 SCC 234, para 22**

"The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided."**—Arijit Pasayat, J., (2003) 7 SCC 197**

"It is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Supreme Court, divorced from the context of the question under consideration and treat it to be the complete `law' declared by the Supreme Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Supreme Court. "**—Dr. A.S. Anand, J., (1992) 4 SCC 363, 385, 386**

"The doctrine of stare decisis has no statutory sanction but it is a rule of convenience, expediency, prudence and above all public policy." **—Pattanaik, J., (2001) 1 SCC 91**

"The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs." **—Pathak, C.J., (1989) 2 SCC 754, 766**

"A decision is available as a precedent only if it decides a question of law." **—L.M. Sharma, J., (1992) 1 SCC 489, 491**

"... the law is, what the judges say it is since the power to interpret the law vests in the judges." **—S. Ratnavel Pandian. J., (1994) 3 SCC 569, 625**

"Precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts." **—N. Santosh Hegde, J., (2000) 1 SCC 644, para 12**

"The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of the Supreme Court." **—N. Santosh Hegde, J., (2002) 4 SCC 234, para 22**

"... a judgment should be understood in the light of facts of that case and no more should be read into it than what it actually says." **—B.P. Jeevan Reddy, J., (1993) 2 SCC 368, 393**

"Judicial propriety, dignity and decorum demand that being the highest judicial tribunal even *obiter dictum* of the Supreme Court should be accepted as binding. ... But statements on matters other than law have no binding force ." **—Krishna Iyer, J., (1975) 1 SCC 794**

"Taking recourse to the doctrine of stare decisis would be an imperative necessity to avoid uncertainty and confusion." **—U.C. Banerjee, J., (1999) 4 SCC 11, para 16**

"It is not everything said by a Judge while giving judgment that constitutes a precedent. ... The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent " **— K. Ramaswamy, J., (1996) 6 SCC 44, 51, 52**

SUPREME COURT CRIMINAL DIGEST™

2006

with

Table of Overruled, Reversed, Followed, etc. Cases

and

Notable Excerpts

by

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PUBLISHERS' NOTE

Once again we present the popular Supreme Court Criminal Digest for the year 2006 based upon the same style as our already popular Supreme Court Yearly Digest. In a single handy volume one gets the law laid down by the Supreme Court of that year relevant to judges, magistrates, practitioners on the criminal side and police officers. Its reliability, comprehensiveness, accuracy and systematic analytical presentation will be of the same quality as our other digests and designed to meet the expectations of our readers.

- **Extensive Coverage**

There was tremendous increase in the number of judgments reported in 2006. They have covered three volumes of 2006 SCC (Cri). Many of them are not reported elsewhere. In addition to including them, many of the judgments of 2006 received late and reported in 2007 have also been covered in this Digest.

- **Thorough Analysis**

Since mere coverage of the main point of the case is not enough, each case has been thoroughly analysed to extract all the rulings for which that case is a binding precedent. Under Article 141 such rulings constitute the law of the land. Even obiter dicta of the Supreme Court have persuasive and guiding value and so have not been altogether ignored.

- **Systematic Arrangement**

Search amongst the rulings discovered would be difficult if they were not systematically arranged. Much effort has therefore been directed towards proper arrangement of the rulings under both statutory and topic headings, interconnected by well-planned cross-references, supported by synopses wherever necessary.

- **Topic Approach**

Extensive use has been made of the topic approach so as to consolidate and present such of the cases decided by the Supreme Court under a State Statute or Rule, which may be applicable under any other State Statute or Rule in a similar situation. This approach has been followed for subjects like Criminal Trial, High Courts, Preventive Detention, etc.

Many new topic heading have been introduced so that a person searching a law point from any aspect may find it. New headings such as Crimes against Women and Children, Social Evils and Practices, Intoxicants, and Scheduled Castes and Scheduled Tribes have been introduced. Headings made and created under various articles of the Constitution of India have been expanded and recast. The aim is to ultimately bring it in consonance with the ***Complete Digest of Supreme Court Cases*** so that the Criminal Digest becomes an yearly appendicle/update to it and the two can be searched seamlessly.

Furthermore, useful non-statutory topics like Administrative Law, Criminal Trial, Doctrines, Interpretation of Statutes, Jurisprudence, Maxims, Practice and Procedure,

Precedents, Public Interest Litigation, Statute Law, etc. have been included, expanded and recast. The all-comprehensive topic "Words and Phrases" besides taking care of particular meanings covers the minute topics as well. The "Topic and Statute Guide" gives a bird's eye view of the different topics and statutes covered in this Criminal Digest. Special efforts have been made to extract rulings on, and references to, minor topics and headings, and to various concepts.

- **Cross References**

Even while adopting the topic approach, the statute approach has been fully taken care of by systematic and elaborate cross-references so that no matter how one starts one's search one reaches the relevant rulings easily and conveniently.

- **Annotations and Editorial notes**

This Criminal Digest also contains below several digest notes annotations in respect of earlier connected cases of the Supreme Court and High Courts, especially those appealed against, and some editorial notes and comments.

- **Table of Cases Digested**

The "Table of Cases Digested" affords a quick method for locating any decision by the name of either party. Since digest notes on the same or similar points are naturally placed proximate to each other, by locating the digest notes on any known case from the "Table of Cases Digested", the other relevant cases can easily be located. For convenience the docket numbers run continuously till the end, and are indicated at the top corners of the pages for easy reference.

- **Table of Overruled, Reversed and Followed, etc. cases**

The "Table of Overruled, Reversed and Followed, etc. cases" is a unique and valuable compilation. Since this table reflects the treatment accorded to all the cases cited in the judgments of the Supreme Court in one full year, one can verify the present standing of any case from the kind of treatment received by it, whether it be a case of a High Court, the Privy Council, the Supreme Court itself or a foreign case. Again, if one already knows a ruling relevant to one's case then one can easily find the latest cases of the Supreme Court in which that case has been referred to and which are thereby connected to that issue. The search of precedents by this method can be repeated for each of the connected cases. The chain that is built from case to case would bring out the true picture of development of the law on that particular issue. Moreover, with the availability of the first eleven volumes of the ***Complete Digest of Supreme Court Cases***, the process can also start from there.

- **Notable Excerpts**

Another feature of considerable interest is the collection of Notable Excerpts from the learned judgments. These gems of sublime thought and felicitous expression embody the aspirations and values of our developing law and deserve to be treasured and are worthy of being cited.

- **Valuable and Indispensible**

This Criminal Digest is designed to be a sure and dependable source for the entire Supreme Court case-law of the year. In a way it is complementary to the **Supreme Court Cases (Cri)** which is exclusively devoted to the reporting of judgments of the Supreme Court, reportable and non-reportable, and also serves as an annual update to the ***Complete Digest of Supreme Court Cases***. Increasingly there are a large number of cases which have been exclusively reported in SCC (Cri). From 2005, SCC (Cri) is being published in three volumes per year, each volume with an independent index. This will make research into current cases easier.

- **Complete Digest on CD-ROM**

The Supreme Court Case Finder® on CD-ROM allows, by mere application of a few strokes of the key, retrieval of the entire case-law on any topic, concept, doctrine or statutory provision. By an interactive process case-law can now be sifted so as to locate rulings most relevant to the enquiry being pursued. The hallmarks of this computer software, with its amazing features are: ease of use, authenticity and the reliability associated with our various digests and the SCC. The update service ensures that the database is periodically updated, both through interim updates made available via our web-site and quarterly updates made available on CD-ROMs/DVDs.

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- **Acknowledgements**

An analytical, systematic and comprehensive work such as this necessarily involves the collective effort of several persons. Each one of them has contributed in his or her own way. The merit and accuracy of this work therefore is the result of their dedication, commitment, sustained effort and teamwork. They have earned our warm appreciation and they, like us, can justly feel proud of this publication.

We equally appreciate the goodwill and continuous support received from our subscribers and readers. In trying to provide through SCC, SCC (Cri) and the Digests all rulings of the Supreme Court we seek to fulfil our own commitment to serve the legal profession, as well as the cause of justice.

— Publishers

Justices of the Supreme Court of India

Date on which sworn in

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NOTABLE EXCERPTS

"Increasingly, people are believing that laws are like spiders' webs: if some light or powerless thing falls into them, it is caught, but a bigger one can break through and get away."

— Arijit Pasayat, J. in *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8, para 24

"The commitment, devotion and accountability of the police has to be only to the rule of law. The supervision and control has to be such that it ensures that the police serves the people without any regard, whatsoever, to the status and position of any person while investigating a crime or taking preventive measures. Its approach has to be service oriented, its role has to be defined so that in appropriate cases, where on account of acts of omission and commission of police, the rule of law becomes a casualty, the guilty police officers are brought to book and appropriate action is taken without any delay."

— Y.K. Sabharwal, C.J. in *Prakash Singh* v. *Union of India*, (2006) 8 SCC 1: (2006) 3 SCC (Cri) 417, para 12

"The complex pattern of life which is never static requires a fresher outlook and a timely and vigorous moulding of old precepts to some new conditions, ideas and ideals. If the court acts contrary to the role it is expected to play, it will be destruction of the fundamental edifice on which the justice delivery system stands. People for whose benefit the courts exist shall start doubting the efficacy of the system."

— Arijit Pasayat, J. in *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8, para 22

"The constitutional justification for judicial review, and the vindication of the Rule of Law remain constant in all areas, but the mechanism for giving effect to that justification varies."

— S.H. Kapadia, J. in *Epuru Sudhakar* v. *Govt. of A.P.*, (2006) 8 SCC 161: (2006) 3 SCC (Cri) 438, para 68

"The court must remind itself that the law is not mere logic, but is required to be applied on the basis of its experience."

— S.B. Sinha, J. in *Lt. Governor, NCT* v. *Ved Prakash*, (2006) 5 SCC 228: (2006) 2 SCC (Cri) 449, para 22

"The function of determining whether the act of a constitutional or statutory functionary falls within the constitutional or legislative conferment of power, or is vitiated by self-denial on an erroneous appreciation of the full amplitude of the power, is a matter for the court."

— Arijit Pasayat, J. in *Epuru Sudhakar* v. *Govt. of A.P.*, (2006) 8 SCC 161: (2006) 3 SCC (Cri) 438, para 25

"The nation is passing through a crucial transitional period in our history, and the Supreme Court cannot remain silent in matters of great public concern, such as the present one. The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when We have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news is coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. Such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut-off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We sometimes hear of 'honour' killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal-minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism. It is therefore directed that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major

undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple is not harassed by anyone nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law."

— Markandey Katju, J. in *Lata Singh* v. *State of U.P.*, (2006) 5 SCC 475: (2006) 2 SCC (Cri) 478, paras 16 to 18

"The Public Prosecutor has to shoulder a greater responsibility for withdrawal of the cases under Section 321 CrPC. The Public Prosecutor cannot act like a postbox or act on the dictates of the State Governments. He has to act objectively as he is also an officer of the court. At the same time the court is also not bound by that. The courts are also free to assess whether the prima face case is made or not. The court, if satisfied, can also reject the prayer [for withdrawal]."

— A.K. Mathur, J. in *S.K. Shukla* v. *State of U.P.*, (2006) 1 SCC 314: (2006) 1 SCC (Cri) 366, para 32

"The Rule of Law is the basis for evaluation of all decisions. The supreme quality of the Rule of Law is fairness and legal certainty. The principle of legality occupies a central plan in the Rule of Law. Every prerogative has to be the subject to the Rule of Law. That rule cannot be compromised on the grounds of political expediency. To go by such considerations would be subversive of the fundamental principles of the Rule of Law and it would amount to setting a dangerous precedent. The Rule of Law principle comprises a requirement of 'Government according to law'. The ethos of 'Government according to law' requires the prerogative to be exercised in a manner which is consistent with the basic principle of fairness and certainty."

— S.H. Kapadia, J. in *Epuru Sudhakar* v. *Govt. of A.P.*, (2006) 8 SCC 161: (2006) 3 SCC (Cri) 438, para 66

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Crimes	Crimes
CLT	Cuttack Law Times
DLT	Delhi Law Times
FAC	Food Adulteration Cases
FAJ	Food Adulteration Journal
Gau LR	Gauhati Law Reports
GCD	Gujarat Current Decisions
GLR	Gujarat Law Reporter
KLJ	Kerala Law Journal
KLT	Kerala Law Times
Mad LJ	Madras Law Journal
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followed	3	1	6
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relied on	2	310	317
relied on	3	125	146
relied on	3	125	149
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relied on	2	528	535
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followed	1	512	514
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referred to	3	245	263
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cited	3	245	263
Koli Chunilal Savji *v.* State of Gujarat, (1999) 9 SCC 562 : 2000 SCC (Cri) 432, *relied on*	2	554	559
Krishan Mohar Singh Dugal *v.* State of Goa, (1999) 8 SCC 552 : 2000 SCC (Cri) 6, *followed*	1	304	307
Krishna Bhagwan *v.* State of Bihar, 1989 Pat LJR 507(2) (FB), *approved*	2	623	627
Krishna Govind Patil *v.* State of Maharashtra, (1964) 1 SCR 678 : AIR 1963 SC 1413 : (1963) 2 Cri LJ 351, *explained* and *distinguished*	1	209	216
Krishna Kanwar *v.* State of Rajasthan, (2004) 2 SCC 608 : 2004 SCC (Cri) 607, *referred to*	1	634	635
Krishnabai Bhritar Ganpatrao Deshmukh *v.* Appasaheb Tuljaramarao Nimbalkar, (1979) 4 SCC 60, *relied on*	1	442	453
Krishnan *v.* State of Kerala, (1996) 10 SCC 508 : 1996 SCC (Cri) 1375, *distinguished on facts*	1	790	794
considered	3	503	511
Krishnanand *v.* State of M. P., (1977) 1 SCC 816 : 1977 SCC (Cri) 190, *cited*	1	442	449
Krishnappa *v.* State of Karnataka, (2004) 7 SCC 792 : 2004 SCC (Cri) 2093, *followed*	1	568	569
applied	1	764	766
relied on	2	324	325
relied on	3	532	535
Kubic Darusz *v.* Union of India, (1990) 1 SCC 568 : 1990 SCC (Cri) 227, *relied on*	1	257	265
Kuldeep Singh *v.* State of Punjab, (2005) 3 RCR 599 (P&H), *approved*	3	101	105
Kundan Lal Rallaram *v.* Custodian, Evacuee Property, AIR 1961 SC 1316 : 1961 An LT 601, *relied on*	3	30	46
Kusum Ingots & Alloys Ltd. *v.* Union of India, (2004) 6 SCC 254, *relied on*	2	98	109
L. M. S. Ummu Saleema *v.* B. B. Gujaral, (1981) 3 SCC 317 : 1981 SCC (Cri) 720, *relied on*	2	432	440
relied on	3	270	281
Lachman Singh *v.* State, 1952 SCR 839 : AIR 1952 SC 167 : 1952 Cri LJ 863, *relied on*	2	505	512
Lakhjit Singh *v.* State of Punjab, 1994 Supp (1) SCC 173 : 1994 SCC (Cri) 235, *relied on*	3	556	569
Lakshmanan, Re, (1971) 1 MLJ 242, *approved*	1	470	476
Lakshmi Singh *v.* State of Bihar, (1976) 4 SCC 394 : 1976 SCC (Cri) 671, *considered* and *relied on*	1	696	704
cited	2	178	197
relied on	3	361	365
relied on	3	578	586
Lalu Prasad *v.* State of Jharkhand, (2006) 6 SCC 661 : (2006) 3 SCC (Cri) 173, *referred to*	3	125	153
Laxman *v.* State of Maharashtra, (2002) 6 SCC 710 : 2002 SCC (Cri) 1491, *relied on*	2	554	558

Laxman Singh *v.* Poonam Singh, (2004) 10 SCC 94 : 2004 SCC (Cri) 1514, *considered* and *relied on*	1	696	720
considered and *relied on*	1	696	723
relied on	2	178	197
Leeson *v.* General Council of Medical Education, (1890) 43 Ch D 366 : (1886-90) All ER Rep 78 : 61 LT 849 (CA), *referred to*	2	8	25
Lehna *v.* State of Haryana, (2002) 3 SCC 76 : 2002 SCC (Cri) 526, *relied on*	3	503	509
Lt. Col. Khajoor Singh *v.* Union of India, (1961) 2 SCR 828 : AIR 1961 SC 532, *cited*	2	98	110
Lumbhardar Zutshi *v.* R., AIR 1950 PC 26 : 51 Cri LJ 644, *cited*	1	683	685
M. Ahamedkutty *v.* Union of India, (1990) 2 SCC 1 : 1990 SCC (Cri) 258, *distinguished*	2	90	93
relied on	3	270	280
M. C. Abraham *v.* State of Maharashtra, (2003) 2 SCC 649 : 2003 SCC (Cri) 628, *followed*	2	323	323
M. C. Mehta *v.* Union of India, (1987) 1 SCC 395 : 1987 SCC (L&S) 7, *relied on*	2	54	75
(2003) 8 SCC 696, *referred to*	3	125	168
M. Krishnan *v.* Vijay Singh, (2001) 8 SCC 645 : 2002 SCC (Cri) 19, *relied on*	3	188	199
M. Narsinga Rao *v.* State of A. P., (2001) 1 SCC 691 : 2001 SCC (Cri) 258, *distinguished on facts*	1	520	530
M. R. Parashar *v.* Dr. Farooq Abdullah, (1984) 2 SCC 343 : 1984 SCC (Cri) 254, *relied on*	1	291	294
Machhi Singh *v.* State of Punjab, (1983) 3 SCC 470 : 1983 SCC (Cri) 681, *followed*	1	487	490
Madan Gopal Kakkad *v.* Naval Dubey, (1992) 3 SCC 204 : 1992 SCC (Cri) 598, *followed*	1	217	224
cited	2	121	124
considered and *relied on*	2	296	304
followed	2	296	306
Madan Lal Anand *v.* Union of India, (1990) 1 SCC 81 : 1990 SCC (Cri) 51, *relied on*	3	270	281
Madavarayachar *v.* Subba Rau, ILR (1891) 15 Mad 94, *referred to*	1	470	478
Madhavrao Jiwajirao Scindia *v.* Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692 : 1988 SCC (Cri) 234, *distinguished*	1	571	573
relied on	3	188	199
Madhu Limaye *v.* State of Maharashtra, (1977) 4 SCC 551 : 1978 SCC (Cri) 10, *relied on*	3	245	261
Madineni Kondaiah *v.* Yaseen Fatima, AIR 1986 AP 62 : (1986) 60 Comp Cas 762 (FB), *held approved*	2	344	348
Maghar Singh *v.* State of Punjab, (1975) 4 SCC 234 : 1975 SCC (Cri) 479, *cited*	2	121	124
Mahabir Choudhary *v.* State of Bihar, (1996) 5 SCC 107 : 1996 SCC (Cri) 883, *considered*	2	178	195
Mahabir Prasad Singh *v.* Jacks Aviation (P) Ltd., (1999) 1 SCC 37, *followed*	2	493	496
Maharashtra State Board of Secondary and Higher Secondary Education *v.* Paritosh Bhupeshkumar Sheth, (1984) 4 SCC 27, *relied on*	1	727	732
Mahendra Lal Das *v.* State of Bihar, (2002) 1 SCC 149, *relied on*	1	47	56
Mahendra Rai *v.* Mithilesh Rai, (1997) 10 SCC 605 : 1997 SCC (Cri) 899, *relied on*	1	160	168
Mahesh *v.* State of M. P., (1987) 3 SCC 80 : 1987 SCC (Cri) 379, *followed*	3	1	5
Major E. G. Barsay *v.* State of Bombay, (1962) 2 SCR 195 : AIR 1961 SC 1762 : (1961) 2 Cri LJ 828, *relied on*	1	686	691
relied on	3	233	244
Major Singh Lachhman Singh *v.* State, AIR 1963 Punj 443 : (1963) 2 Cri LJ 390 (FB), *referred to*	3	556	573
Malhu Yadav *v.* State of Bihar, (2002) 5 SCC 724 : 2002 SCC (Cri) 1190, *relied on*	2	505	511
Malla Prakasarao *v.* Malla Janaki, (2004) 3 SCC 343 : 2004 SCC (Cri) 776, *relied on*	2	214	219
Mallett *v.* McMonagle, (1969) 2 All ER 178 : 1970 AC 166 : (1969) 2 WLR 767 (HL), *relied on*	1	65	70
followed	3	90	94
Mannam Venkatadari *v.* State of A. P., (1971) 3 SCC 254 : 1971 SCC (Cri) 479, *cited*	2	505	512
Mannu *v.* State of U. P., (1979) 1 SCC 235 : 1978 SCC (Cri) 604, *applied*	2	178	194
Manohar Nath Kaul *v.* State of J&K, (1983) 3 SCC 429 : 1983 SCC (Cri) 647, *followed*	2	593	609
Mansukhlal Vithaldas Chauhan *v.* State of Gujarat, (1997) 7 SCC 622 : 1997 SCC (Cri) 1120 : 1997 SCC (L&S) 1784, *relied on*	3	438	456
Maru Ram *v.* Union of India, (1981) 1 SCC 107 : 1981 SCC (Cri) 112, *relied on*	3	438	447
Masalti *v.* State of U. P., (1964) 8 SCR 133 : AIR 1965 SC 202 : (1965) 1 Cri LJ 226, *considered* and *relied on*	1	696	718
referred to	2	178	199
relied on	3	503	508
relied on	3	546	552
relied on	3	546	554
Matajog Dobey *v.* H. C. Bhari, (1955) 2 SCR 925 : AIR 1956 SC 44 : 1956 Cri LJ 140, *relied on*	1	432	439
applied	2	358	372
referred to	2	358	384
relied on	2	573	579
followed	2	593	604

Mayar (H. K.) Ltd. *v.* Owners & Parties, Vessel M. V. Fortune Express, (2006) 3 SCC 100, *relied on*	2	98	111
Medchl Chemicals & Pharma (P) Ltd. *v.* Biological E. Ltd., (2000) 3 SCC 269 : 2000 SCC (Cri) 615, *relied on*	3	188	199
Meharaj Singh *v.* State of U. P., (1994) 5 SCC 188 : 1994 SCC (Cri) 1391, *overruled on this point*	1	661	671
held distinguished	3	377	386
referred to	3	592	599
Metropolitan Properties Co. *v.* Lannon, (1968) 3 All ER 304 : (1969) 1 QB 577 : (1968) 3 WLR 694 (CA), *approved*	1	23	31
referred to	2	8	25
Michael Machado *v.* Central Bureau of Investigation, (2000) 3 SCC 262 : 2000 SCC (Cri) 609, *applied*	1	278	279
followed	1	568	569
referred to	1	764	765
relied on	3	532	535
Minu Kumari *v.* State of Bihar, (2006) 4 SCC 359 : (2006) 2 SCC (Cri) 310, *relied on*	3	63	66
relied on	3	245	266
Mirza Akbar *v.* King Emperor, (1940-41) 45 CWN 269 : AIR 1940 PC 176 : 41 Cri LJ 871, *relied on*	1	175	187
Mithu Singh *v.* State of Punjab, (2001) 4 SCC 193 : 2001 SCC (Cri) 668, *considered*	2	154	160
Mizaji *v.* State of U. P., 1959 Supp (1) SCR 940 : AIR 1959 SC 572 : 1959 Cri LJ 777, *relied on*	1	661	676
considered and *relied on*	1	696	718
referred to	2	178	198
Mohan Lal Pangasa *v.* State of U. P., (1974) 4 SCC 607 : 1974 SCC (Cri) 643, *referred to*	1	470	479
Mohan Singh *v.* State of Punjab, 1962 Supp (3) SCR 848 : AIR 1963 SC 174 : (1963) 1 Cri LJ 100, *cited*	1	696	720
cited	2	178	200
relied on	3	546	552
Mohanlal Shamji Soni *v.* Union of India, 1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595, *relied on*	3	300	308
Mohar Rai *v.* State of Bihar, (1968) 3 SCR 525 : AIR 1968 SC 1281 : 1968 Cri LJ 1479, *relied on*	1	696	714
relied on	3	212	222
Mohd. Hadi Raja *v.* State of Bihar, (1998) 5 SCC 91 : 1998 SCC (Cri) 1265, *relied on*	2	135	138
Mohd. Hoshan *v.* State of A. P., (2002) 7 SCC 414 : 2002 SCC (Cri) 1765, *relied on*	3	408	414
Mohd. Iqbal Ahmed *v.* State of A. P., (1979) 4 SCC 172 : 1979 SCC (Cri) 926, *distinguished on facts*	1	41	45
Mohd. Khalid *v.* State of W. B., (2002) 7 SCC 334 : 2002 SCC (Cri) 1734, *relied on*	1	175	187
Mohd. Khalil Khan *v.* Mahbub Ali Mian, (1947-48) 75 IA 121 : AIR 1949 PC 78, *relied on*	3	24	29
Mohd. Safi *v.* State of W. B., (1965) 3 SCR 467 : AIR 1966 SC 69 : 1966 Cri LJ 75, *followed*	1	47	52
Mohd. Sharif *v.* Federation of Pakistan, PLD 1988 Lah 725, *approved*	3	438	460
Mohd. Yunus *v.* Mohd. Mustaqim, (1983) 4 SCC 566, *relied on*	3	470	476
Monaben Ketanbhai Shah *v.* State of Gujarat, (2004) 7 SCC 15 : 2004 SCC (Cri) 1857, *relied on*	2	98	113
Moonshee Buzloor Ruheem *v.* Shumsoonnissa Begum, (1867) 11 MIA 551 (PC), *cited*	3	24	29
Moti Singh *v.* State of Maharashtra, (2002) 9 SCC 494 : 2003 SCC (Cri) 1226, *considered*	2	178	195
Mrityunjoy Das *v.* Sayed Hasibur Rahaman, (2001) 3 SCC 739 : (2006) 1 SCC (Cri) 296, *relied on*	1	291	294
Mujeeb *v.* State of Kerala, (2000) 10 SCC 315 : 2000 SCC (Cri) 78, *referred to*	1	470	480
Municipal Corpn. of Delhi *v.* Ram Kishan Rohtagi, (1983) 1 SCC 1 : 1983 SCC (Cri) 115, *referred to*	3	245	263
relied on	3	532	535
Municipal Corpn. of Delhi *v.* Subhagwanti, (1966) 3 SCR 649 : AIR 1966 SC 1750, *relied on*	1	65	68
followed	3	90	93
Munna Chanda *v.* State of Assam, (2006) 3 SCC 752 : (2006) 2 SCC (Cri) 43, *considered*	3	212	223
relied on	3	522	528
Munney Khan *v.* State of M. P., (1970) 2 SCC 480 : 1970 SCC (Cri) 491, *applied*	2	178	192
Munshi Singh Gautam *v.* State of M. P., (2005) 9 SCC 631 : 2005 SCC (Cri) 1269, *relied on*	2	54	76
relied on	2	54	78
Murray & Co. *v.* Ashok Kr. Newatia, (2000) 2 SCC 367 : 2000 SCC (Cri) 473, *relied on*	1	296	302
Mustakmiya Jabbarmiya Shaikh *v.* M. M. Mehta, (1995) 3 SCC 237 : 1995 SCC (Cri) 454, *relied on*	3	11	14
Muthu Kutty *v.* State, (2005) 9 SCC 113 : 2005 SCC (Cri) 1202, *relied on*	2	554	558
N. Bhargavan Pillai *v.* State of Kerala, (2004) 13 SCC 217 : 2005 SCC (Cri) 142, *relied on*	2	460	465
followed	2	593	606
felied on	3	83	89
N. Jagadeesan *v.* District Collector, North Arcot, (1997) 4 SCC 508, *referred to*	2	573	575
Nadeem Ahmed *v.* State, 2004 Cri LJ 4798 (Kant), *referred to*	3	101	103
Nagawwa *v.* Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736 : 1976 SCC (Cri) 507, *referred to*	1	746	750
Nakul Deo Singh *v.* Dy. Commandant, (1999) 3 KLT 629 (FB), *approved*	2	98	107

Nance *v.* British Columbia Electric Rly. Co. Ltd., (1951) 2 All ER 448 : 1951 AC 601 (PC), *referred to*	1	65	70
followed	3	90	93
Narayan Singh *v.* State of M. P., (1985) 4 SCC 26 : 1985 SCC (Cri) 460, *cited*	2	121	124
Narayandas Bhagwandas Madhavdas *v.* State of W. B., (1960) 1 SCR 93 : AIR 1959 SC 1118 : 1959 Cri LJ 1368, *considered*	1	460	466
relied on	3	179	185
Narendra Singh *v.* State of M. P., (2004) 10 SCC 699 : 2004 SCC (Cri) 1893, *considered* and *relied on*	3	377	384
Naresh Kumar Goyal *v.* Union of India, (2005) 8 SCC 276 : (2006) 1 SCC (Cri) 34, *considered*	2	418	422
Naresh Shridhar Mirajkar *v.* State of Maharashtra, (1966) 3 SCR 744 : AIR 1967 SC 1, *relied on*	2	98	108
Nathu *v.* State of U. P., (1979) 3 SCC 574 : 1979 SCC (Cri) 733, *referred to*	2	402	409
Nathuni Yadav *v.* State of Bihar, (1998) 9 SCC 238 : 1998 SCC (Cri) 992, *considered*	3	503	510
National Human Rights Commission *v.* State of Arunachal Pradesh, (1996) 1 SCC 742, *cited*	2	33	35
National Insurance Co. Ltd. *v.* Baljit Kaur, (2004) 2 SCC 1 : 2004 SCC (Cri) 370, *referred to*	2	214	220
National Insurance Co. Ltd. *v.* Nicolletta Rohtagi, (2002) 7 SCC 456 : 2002 SCC (Cri) 1788, *followed*	1	773	774
referred to	2	214	216
National Insurance Co. Ltd. *v.* Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733, *followed*	1	519	520
relied on	2	214	218
followed	3	266	270
National Insurance Corpn. Ltd. *v.* Kanti Devi, (2005) 5 SCC 789 : 2005 SCC (Cri) 1354, *relied on*	2	214	220
Navganbhai Somabhai *v.* State of Gujarat, 1994 Supp (3) SCC 653 : 1995 SCC (Cri) 132, *relied on*	1	696	712
Navinchandra N. Majithia *v.* State of Maharashtra, (2000) 7 SCC 640 : 2001 SCC (Cri) 215, *referred to*	2	98	104
relied on	3	24	28
Nethala Pothuraju *v.* State of A. P., (1992) 1 SCC 49 : 1992 SCC (Cri) 20, *cited*	2	505	512
followed	2	518	525
New India Assurance Co. *v.* Kamla, (2001) 4 SCC 342 : 2001 SCC (Cri) 701, *considered*	2	214	216
referred to	3	266	268
New India Assurance Co. *v.* Satpal Singh, (2000) 1 SCC 237 : 2000 SCC (Cri) 130, *held, overruled*	1	779	780
held, overruled	2	344	350
New India Assurance Co. Ltd. *v.* Asha Rani, (2003) 2 SCC 223 : 2003 SCC (Cri) 493, *followed*	1	779	780
relied on	2	344	351
New India Assurance Co. Ltd. *v.* Charlie, (2005) 10 SCC 720 : 2005 SCC (Cri) 1657, *followed*	3	90	96
New India Assurance Co. Ltd. *v.* Mandar Madhav Tambe, (1996) 2 SCC 328 : 1996 SCC (Cri) 307, *limited*	1	519	519
New India Assurance Co. Ltd. *v.* Sheela Rani, (1998) 6 SCC 599 : 1999 SCC (Cri) 174, *followed*	2	344	348
Nilabati Behera *v.* State of Orissa, (1993) 2 SCC 746 : 1993 SCC (Cri) 527, *relied on*	2	54	72
relied on	2	54	75
Niranjan Singh *v.* State, (1986) 2 Crimes 335 (Del), *considered*	3	556	572
Nirmal Jeet Kaur *v.* State of M. P., (2004) 7 SCC 558 : 2004 SCC (Cri) 1989, *relied on*	3	83	89
Nirmal Kumar *v.* State of Haryana, 2002 Cri LJ 3352 (P&H), *considered*	3	556	567
Nirmaljit Kaur (1) *v.* State of Punjab, (2006) 9 SCC 363, *cited*	2	543	548
Nisar Ali *v.* State of U. P., 1957 SCR 657 : AIR 1957 SC 366 : 1957 Cri LJ 550, *relied on*	3	503	509
Noor Mohd. Mohd. Yusuf Momin *v.* State of Maharashtra, (1970) 1 SCC 696 : 1970 SCC (Cri) 274, *relied on*	1	686	693
Nuna *v.* Emperor, 15 IC 309 : (1912) 13 Cri LJ 469, *considered*	3	556	575
Om Hemrajani *v.* State of U. P., (2005) 1 SCC 617 : 2005 SCC (Cri) 443, *relied on*	2	98	111
Om Prakash Gupta *v.* State of U. P., 1957 SCR 423 : AIR 1957 SC 458 : 1957 Cri LJ 575, *followed*	2	593	608
Omar Usman Chamadia *v.* Abdul, (2004) 13 SCC 234 : 2005 SCC (Cri) 157, *referred to*	1	560	562
ONGC *v.* Utpal Kumar Basu, (1994) 4 SCC 711, *relied on*	2	98	106
relied on	3	24	27
Oriental Insurance Co. Ltd. *v.* Nanjappan, (2004) 13 SCC 224 : 2005 SCC (Cri) 148, *relied on*	2	214	217
P. A. Mohandas *v.* State of Kerala, (2003) 9 SCC 504 : 2004 SCC (Cri) 1176, *followed*	3	577	577
P. Arulswami *v.* State of Madras, (1967) 1 SCR 201 : AIR 1967 SC 776 : 1967 Cri LJ 665, *relied on*	1	432	437
referred to	2	358	385
P. Chhaganlal Daga *v.* M. Sanjay Shaw, (2003) 11 SCC 486 : 2004 SCC (Cri) 183, *relied on*	3	300	310
P. Jayappan *v.* S. K. Perumal, 1984 Supp SCC 437 : 1985 SCC (Tax) 7, *referred to*	2	221	237
P. K. Pradhan *v.* State of Sikkim, (2001) 6 SCC 704 : 2001 SCC (Cri) 1234, *referred to*	2	358	386
followed	2	593	604
P. Nallammal *v.* State, (1999) 6 SCC 559 : 1999 SCC (Cri) 1133, *referred to*	1	325	331

P. Ramachandra Rao *v.* State of Karnataka, (2002) 4 SCC 578 : 2002 SCC (Cri) 830, *relied on*	1	47	57
followed	2	319	319
P. Ratnakar Rao *v.* Govt. of A. P., (1996) 5 SCC 359, *considered*	1	202	207
P. U. Abdul Rahiman *v.* Union of India, 1991 Supp (2) SCC 274 : 1991 SCC (Cri) 1032, *distinguished*	2	90	93
P. U. Iqbal *v.* Union of India, (1992) 1 SCC 434 : 1992 SCC (Cri) 184, *relied on*	1	34	38
cited	2	418	423
P. V. Radhakrishna *v.* State of Karnataka, (2003) 6 SCC 443 : 2003 SCC (Cri) 1679, *relied on*	2	554	558
Padfield *v.* Minister of Agriculture, Fisheries and Food, 1968 AC 997 : (1968) 1 All ER 694 : (1968) 2 WLR 924 (HL), *cited*	3	438	457
relied on	3	438	460
Pala Singh *v.* State of Punjab, (1972) 2 SCC 640 : 1973 SCC (Cri) 55, *relied on*	1	738	743
Palvinder Kaur *v.* State of Punjab, 1953 SCR 94 : AIR 1952 SC 354 : 1953 Cri LJ 154, *cited*	2	402	409
Pandharinath Shridhar Rangnekar *v.* Dy. Commr. of Police, (1973) 1 SCC 372 : 1973 SCC (Cri) 341, *relied on*	2	449	455
Paniben *v.* State of Gujarat, (1992) 2 SCC 474 : 1992 SCC (Cri) 403, *relied on*	2	554	558
Paragon Finance *v.* D. B. Thakerar & Co., (1999) 1 All ER 400 (CA), *referred to*	2	98	107
Paras Yadav *v.* State of Bihar, (1999) 2 SCC 126 : 1999 SCC (Cri) 104, *cited*	2	8	31
Parbhu *v.* Emperor, AIR 1944 PC 73 : 46 Cri LJ 119, *cited*	1	683	685
Parkash Chand *v.* State of H. P., (2004) 11 SCC 381 : 2004 SCC (Cri) Supp 87, *relied on*	2	394	398
Parsuram Pandey *v.* State of Bihar, (2004) 13 SCC 189 : 2005 SCC (Cri) 113, *relied on*	3	578	590
Parveen Kumar *v.* State of Punjab, 1999 Cri LJ 1919 (P&H), *affirmed*	1	146	146
Parvinder Singh *v.* Renu Gautam, (2004) 4 SCC 794, *relied on*	1	442	454
Pattipati Venkaiah *v.* State of A. P., (1985) 4 SCC 80 : 1985 SCC (Cri) 464, *relied on*	3	512	520
Pawan Kumar *v.* State of H. P., Criminal Appeal No. 2 of 1995 (HP), *cited*	1	362	363
Pawan Kumar *v.* State of Haryana, (1998) 3 SCC 309 : 1998 SCC (Cri) 740, *relied on*	3	408	413
Payana Reena Saminathan *v.* Pana Lana Palaniappa, (1913-14) 41 IA 142, *relied on*	3	24	29
Pearse *v.* Pearse, (1846) 1 De G&SM 12 : 16 LJ Ch 153 : 63 ER 950 : 18 Digest (Repl), 91, 748, *relied on*	2	8	28
Pedda Narayana *v.* State of A. P., (1975) 4 SCC 153 : 1975 SCC (Cri) 427, *followed*	1	661	672
People *v.* Nowak, 35, NE 2d 63, 387 III, II, *cited*	3	438	451
People's Union for Civil Liberties *v.* Union of India, (2004) 9 SCC 580 : 2005 SCC (Cri) 1905, *followed*	1	399	400
relied on	2	399	401
Peoples' Union for Democratic Rights *v.* Police Commr., (1989) 4 SCC 730 : 1990 SCC (Cri) 75, *relied on*	2	54	72
Piara Singh *v.* State of Punjab, (1977) 4 SCC 452 : 1977 SCC (Cri) 614, *referred to*	1	470	480
cited	2	121	124
Poonam Chand Jain *v.* Fazru, (2004) 13 SCC 269 : 2005 SCC (Cri) 190, *cited*	2	135	143
Powanammal *v.* State of T. N., (1999) 2 SCC 413 : 1999 SCC (Cri) 231, *relied on*	3	50	53
Prabha Shankar Dubey *v.* State of M. P., (2004) 2 SCC 56 : 2004 SCC (Cri) 420, *referred to*	1	634	635
Prabhakar Shankar Dhuri *v.* S. G. Pradhan, (1971) 3 SCC 896 (2) : 1972 SCC (Cri) 204 (2), *relied on*	2	432	440
Prabhu *v.* State of M. P., 1991 Supp (2) SCC 725 : 1992 SCC (Cri) 56, *relied on*	1	388	397
Pradeep Kumar Biswas *v.* Indian Institute of Chemical Biology, (2002) 5 SCC 111 : 2002 SCC (L&S) 633, *referred to*	2	135	141
Pranab Kumar Mitra *v.* State of W. B., 1959 Supp (1) SCR 63 : AIR 1959 SC 144 : 1959 Cri LJ 256, *cited*	3	54	57
Pratap Singh *v.* State of Jharkhand, (2005) 3 SCC 551 : 2005 SCC (Cri) 742, *followed*	1	129	134
followed	2	632	640
Praveen Kumar *v.* State of Karnataka, (2003) 12 SCC 199 : 2004 SCC (Cri) Supp 357, *relied on*	2	568	571
Preetam Singh *v.* State of Rajasthan, (2003) 12 SCC 594 : 2004 SCC (Cri) Supp 515, *relied on*	1	696	723
Pregada Balanagu *v.* Krosuru Kotayya, AIR 1937 Mad 578 : 38 Cri LJ 950, *approved*	1	470	479
Prem Chand Vijay Kumar *v.* Yashpal Singh, (2005) 4 SCC 417 : 2005 SCC (Cri) 1153, *relied on*	2	98	113
relied on	3	114	124
Pritam Nath Hoon *v.* Union of India, (1980) 4 SCC 525 : 1981 SCC (Cri) 19, *cited*	2	432	441
Pukhraj *v.* State of Rajasthan, (1973) 2 SCC 701 : 1973 SCC (Cri) 944, *relied on*	2	358	373
referred to	2	358	385
Punjabrao *v.* State of Maharashtra, (2002) 10 SCC 371 : 2004 SCC (Cri) 1130, *relied on*	1	401	405
distinguished	1	408	413
Pushpabai Purshottam Udeshi *v.* Ranjit Ginning & Pressing Co. (P) Ltd., (1977) 2 SCC 745, *relied on*	2	344	349
relied on	3	433	437
R. *v.* Allen, (1839) 9 C&P 31: 173 ER 727, *relied on*	3	556	567
R. *v.* Burdett, 4 B & Ald 95, 161 : 106 ER 873, *cited*	3	30	44

R. *v.* Halliday, 1917 AC 260 : (1916-17) All ER Rep Ext 1284 : 169 ER 1252, *relied on*	1	257	265
R. *v.* Hill, (1781) 1 East PC 439, *relied on*	3	556	567
R. *v.* Hughes, (1841) 2 Mood 190 : 169 ER 75, *relied on*	3	556	567
R. *v.* Hussey, (1924) 18 Cr App R 160, *relied on*	1	696	725
R. *v.* James Lloyd, (1836) 7 C&P 317 : 173 ER 141, *relied on*	3	556	567
R. *v.* Justices of London, (1895) 1 QB 214, *cited*	3	438	457
R. *v.* Lines, (1844) 1 C&K 393 : 174 ER 861, *relied on*	3	556	567
R. *v.* M'Rue, (1838) 8 C&P 641 : 173 ER 653, *relied on*	3	556	567
R. *v.* Marsden, (1891) 2 QB 149, *relied on*	3	556	567
R. *v.* Secy. of State for the Home Deptt., ex p Bentley, (1993) 4 All ER 442 (QBD), *approved*	3	438	462
R. Balakrishna Pillai *v.* State of Kerala, (1996) 1 SCC 478 : 1996 SCC (Cri) 128, *followed*	1	23	30
relied on	1	432	441
R. J. Singh Ahuluwalia *v.* State of Delhi, (1970) 3 SCC 451 : 1971 SCC (Cri) 57, *distinguished on facts*	1	41	44
R. Keshava *v.* M. B. Prakash, (2001) 2 SCC 145 : 2001 SCC (Cri) 289, *relied on*	1	257	266
R. M. Tewari *v.* State (NCT of Delhi), (1996) 2 SCC 610 : 1996 SCC (Cri) 361, *followed*	1	366	386
R. P. Kapur *v.* State of Punjab, (1960) 3 SCR 388 : AIR 1960 SC 866 : 1960 Cri LJ 1239, *relied on*	2	272	280
relied on	3	233	239
relied on	3	245	261
R. R. Chari *v.* State of U. P., 1951 SCR 312 : AIR 1951 SC 207 : 1951 Cri LJ 775, *cited*	1	460	466
relied on	3	179	184
Rabindra Kumar Dey *v.* State of Orissa, (1976) 4 SCC 233 : 1976 SCC (Cri) 566, *relied on*	1	661	668
Rabindra Mahto *v.* State of Jharkhand, (2006) 10 SCC 432 : (2006) 3 SCC (Cri) 592, *relied on*	3	578	590
Rachpal Singh *v.* R., AIR 1949 Oudh 66 : 50 Cri LJ 469, *cited*	3	101	109
Radhakrishnan Prabhakaran *v.* State of T. N., (2000) 9 SCC 170 : 2000 SCC (Cri) 1198, *relied on*	2	90	97
Rafiq *v.* State of U. P., (1980) 4 SCC 262 : 1980 SCC (Cri) 947, *considered* and *relied on*	2	296	303
Raghavendra Singh *v.* Supdt., Distt. Jail, Kanpur, (1986) 1 SCC 650 : 1986 SCC (Cri) 60, *relied on*	1	257	265
Raghubans Dubey *v.* State of Bihar, (1967) 2 SCR 423 : AIR 1967 SC 1167 : 1967 Cri LJ 1081, *distinguished on facts*	1	727	730
Raghubir Saran (Dr.) *v.* State of Bihar, (1964) 2 SCR 336 : AIR 1964 SC 1 : (1964) 1 Cri LJ 1, *relied on*	2	272	282
relied on	2	310	317
relied on	3	233	241
Raghunath *v.* State of Haryana, (2003) 1 SCC 398 : 2003 SCC (Cri) 326, *considered* and *relied on*	1	696	718
Raj Deo Sharma (I) *v.* State of Bihar, (1998) 7 SCC 507 : 1998 SCC (Cri) 1692, *cited*	1	47	57
Raj Deo Sharma (II) *v.* State of Bihar, (1999) 7 SCC 604 : 1999 SCC (Cri) 1324, *cited*	1	47	57
Raj Kapoor *v.* State, (1980) 1 SCC 43 : 1980 SCC (Cri) 72, *relied on*	3	245	261
Raj Kishor Roy *v.* Kamleshwar Pandey, (2002) 6 SCC 543 : 2002 SCC (Cri) 1423, *relied on*	2	593	613
Raj Kishore Prasad *v.* State of Bihar, (1996) 4 SCC 495 : 1996 SCC (Cri) 772, *followed*	1	275	277
referred to	3	245	263
Raj Singh *v.* State of Haryana, (2000) 6 SCC 759 : 2000 SCC (Cri) 1270, *referred to*	2	623	629
relied on	2	632	642
Raja *v.* State, (1995) 2 LW (Cri) 513, *overruled*	1	470	476
Raja *v.* State of Rajasthan, 1998 Cri LJ 1608 (Raj), *considered*	3	556	575
Rajammal *v.* State of T. N., (1999) 1 SCC 417 : 1999 SCC (Cri) 93, *distinguished*	1	515	516
Rajasthan High Court Advocates' Assn. *v.* Union of India, (2001) 2 SCC 294, *relied on*	3	24	28
Rajbir Singh *v.* State of U. P., (2006) 4 SCC 51 : (2006) 2 SCC (Cri) 209, *referred to*	2	402	410
Rajeev Chaudhary *v.* State (NCT) of Delhi, (2001) 5 SCC 34 : 2001 SCC (Cri) 819, *overruled*	3	101	105
Rajeevan *v.* State of Kerala, (2003) 3 SCC 355 : 2003 SCC (Cri) 751, *relied on*	3	377	386
Rajender Kumar Jain *v.* State, (1980) 3 SCC 435 : 1980 SCC (Cri) 757, *followed*	1	366	386
Rajender Singh *v.* State of Bihar, (2000) 4 SCC 298 : 2000 SCC (Cri) 796, *relied on*	1	388	396
Rajendra *v.* State of Maharashtra, 1997 SCC (Cri) 840, *considered*	3	556	572
Rajendra Kumar Dhanraj Banthia *v.* State of Gujarat, (2005) 13 SCC 238 : (2006) 2 SCC (Cri) 147, *referred to*	2	143	146
Rajendra Prasad *v.* Narcotic Cell, (1999) 6 SCC 110 : 1999 SCC (Cri) 1062, *relied on*	3	300	309
Rajendra Shantaram Todankar *v.* State of Maharashtra, (2003) 2 SCC 257 : 2003 SCC (Cri) 506, *relied on*	2	581	592
relied on	3	578	589
Rajesh *v.* State of Gujarat, (2002) 4 SCC 426 : 2002 SCC (Cri) 814, *relied on*	3	377	387
Rajesh Bajaj *v.* State NCT of Delhi, (1999) 3 SCC 259 : 1999 SCC (Cri) 401, *relied on*	2	272	282
relied on	3	188	199
relied on	3	233	242

Rajesh Gulati *v.* Govt. of NCT of Delhi, (2002) 7 SCC 129 : 2002 SCC (Cri) 1627, *applied*	1	593	597
distinguished	3	17	20
distinguished on facts	3	50	54
distinguished on facts	3	324	327
Rajesh Kumar *v.* Dharamvir, (1997) 4 SCC 496 : 1997 SCC (Cri) 591, *applied*	2	178	193
Rajinder Prasad *v.* Bashir, (2001) 8 SCC 522 : 2002 SCC (Cri) 28, *referred to*	1	273	274
Rajiv Ranjan Singh 'Lalan' (I) *v.* Union of India, (2005) 11 SCC 308 : (2006) 1 SCC (Cri) 245, *referred to*	3	125	151
Rajiv Ranjan Singh 'Lalan' (II) *v.* Union of India, (2005) 11 SCC 309 : (2006) 1 SCC (Cri) 246, *referred to*	1	247	247
Rajiv Ranjan Singh 'Lalan' (IV) *v.* Union of India, (2005) 11 SCC 311 : (2006) 1 SCC (Cri) 248, *referred to*	1	249	250
Rajiv Ranjan Singh 'Lalan' (V-A) *v.* Union of India, (2006) 6 SCC 662 : (2006) 3 SCC (Cri) 174, *referred to*	3	125	139
Rajiv Ranjan Singh 'Lalan' (VI) *v.* Union of India, (2006) 1 SCC 356 : (2006) 1 SCC (Cri) 251, *clarified*	1	254	254
referred to	3	125	140
Raju Pandurang Mahale *v.* State of Maharashtra, (2004) 4 SCC 371 : 2004 SCC (Cri) 1259, *referred to*	3	556	573
Rakesh Kumar Mishra *v.* State of Bihar, (2006) 1 SCC 557 : (2006) 1 SCC (Cri) 432, *relied on*	2	358	374
referred to	2	358	388
relied on	2	573	580
Ram Bihari Yadav *v.* State of Bihar, (1998) 4 SCC 517 : 1998 SCC (Cri) 1085, *cited*	2	8	31
Ram Bilas Singh *v.* State of Bihar, (1964) 1 SCR 775 : (1964) 1 Cri LJ 573, *relied on*	3	546	552
Ram Jag *v.* State of U. P., (1974) 4 SCC 201 : 1974 SCC (Cri) 370, *relied on*	1	738	742
Ram Jeet *v.* State, AIR 1958 All 439 : 1958 Cri LJ 716, *approved*	3	300	306
Ram Kumar Pandey *v.* State of M. P., (1975) 3 SCC 815 : 1975 SCC (Cri) 225, *relied on*	3	83	86
Ram Mehar *v.* State of Haryana, 1998 Cri LJ 1999 (P&H), *considered*	3	556	576
Ram Saran Mahto *v.* State of Bihar, (1999) 9 SCC 486 : 2000 SCC (Cri) 254, *referred to*	2	402	409
Ram Tahal *v.* State of U. P., (1972) 1 SCC 136 : 1972 SCC (Cri) 80, *considered* and *relied on*	1	696	720
referred to	2	178	200
cited	2	505	512
Ram Udgar Singh *v.* State of Bihar, (2004) 10 SCC 443 : 2004 SCC (Cri) Supp 550, *relied on*	3	512	520
Ramanbhai Naranbhai Patel *v.* State of Gujarat, (2000) 1 SCC 358 : 2000 SCC (Cri) 113, *relied on*	1	661	667
Ramdeo Chauhan *v.* State of Assam, (2001) 5 SCC 714 : 2001 SCC (Cri) 915, *referred to*	2	623	628
relied on	2	632	641
Ramesh Kumar *v.* State of Chhattisgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088, *relied on*	3	408	415
Ramesh Singh *v.* Cinta Devi, (1996) 3 SCC 142 : 1996 SCC (Cri) 467, *cited*	2	344	348
Ramesh Yadav *v.* District Magistrate, Etah, (1985) 4 SCC 232 : 1985 SCC (Cri) 514, *cited*	1	593	598
Rameshwar *v.* State of Haryana, 1984 Cri LJ 786 (P&H), *considered*	3	556	576
Rameshwar *v.* State of Rajasthan, 1952 SCR 377 : AIR 1952 SC 54 : 1952 Cri LJ 547, *relied on*	2	1	6
cited	2	267	271
cited	3	503	508
Rameshwar Shaw *v.* District Magistrate, Burdwan, (1964) 4 SCR 921 : AIR 1964 SC 334 : (1964) 1 Cri LJ 257, *applied*	1	593	596
Ramjas Foundation *v.* Union of India, 1993 Supp (2) SCC 20, *referred to*	3	125	162
Ramji Singh *v.* State of Bihar, (2001) 9 SCC 528 : 2002 SCC (Cri) 760, *relied on*	1	191	200
cited	2	505	512
Ramon Services (P) Ltd. *v.* Subhash Kapoor, (2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152, *followed*	2	493	496
Ramreddy Rajesh Khanna Reddy *v.* State of A. P., (2006) 10 SCC 172 : (2006) 3 SCC (Cri) 512, *relied on*	3	522	531
Ranjeet Singh *v.* Ravi Prakash, (2004) 3 SCC 682, *relied on*	2	98	108
Ranjit Hazarika *v.* State of Assam, (1998) 8 SCC 635 : 1998 SCC (Cri) 1725, *considered* and *relied on*	2	296	304
Ranjit Singh *v.* State of Punjab, (1998) 7 SCC 149 : 1998 SCC (Cri) 1554, *doubted*	1	273	274
followed	1	275	277
referred to	3	245	262
Ranjitsing Brahmajeetsing Sharma *v.* State of Maharashtra, (2005) 5 SCC 294 : 2005 SCC (Cri) 1057, *considered*	3	377	384
Ranvir Singh *v.* Union of India, (2005) 12 SCC 59, *relied on*	1	41	44
Rao Shiv Bahadur Singh *v.* State of V. P., 1954 SCR 1098 : AIR 1954 SC 322 : 1954 Cri LJ 910, *cited*	2	121	124

Rashmi Kumar *v.* Mahesh Kumar Bhada, (1997) 2 SCC 397 : 1997 SCC (Cri) 415, *relied on*	2	272	282
relied on	3	233	241
Ravinder Kumar *v.* State of Punjab, (2001) 7 SCC 690 : 2001 SCC (Cri) 1384, *relied on*	3	408	411
Ravji *v.* State of Rajasthan, (1996) 2 SCC 175 : 1996 SCC (Cri) 225, *relied on*	1	499	503
followed	3	1	7
Rayala Corpn. (P) Ltd. *v.* Director of Enforcement, (1969) 2 SCC 412, *distinguished*	2	221	236
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Reddy Sampath Kumar *v.* State of A. P., (2005) 7 SCC 603 : 2005 SCC (Cri) 1710, *relied on*	3	512	521
Registrar, High Court of Madras *v.* R. Rajiah, (1988) 3 SCC 211 : 1988 SCC (L&S) 743, *cited*	3	125	172
Rikhi Ram *v.* Sukhrania, (2003) 3 SCC 97 : 2003 SCC (Cri) 735, *followed*	2	344	349
Rivadeneyta Ricardo Agustin *v.* Govt. of the NCT of Delhi, 1994 Supp (1) SCC 597 : 1994 SCC (Cri) 354, *referred to*	1	593	597
Rizan *v.* State of Chhattisgarh, (2003) 2 SCC 661 : 2003 SCC (Cri) 664, *relied on*	3	361	366
relied on	3	578	587
Rizwan Ahmed Javed Shaikh *v.* Jammal Patel, (2001) 5 SCC 7, *applied*	2	358	376
Romesh Lal Jain *v.* Naginder Singh Rana, (2006) 1 SCC 294 : (2006) 2 SCC (Cri) 593, *relied on*	2	573	579
Roopa Ram *v.* State of Rajasthan, 1999 SCC (Cri) 1316 : 1999 Cri LJ 2901, *distinguished on facts*	1	191	200
Rudul Sah *v.* State of Bihar, (1983) 4 SCC 141 : 1983 SCC (Cri) 798, *relied on*	2	54	71
Rumana Begum *v.* State of A. P., 1993 Supp (2) SCC 341 : 1993 SCC (Cri) 551, *relied on*	1	257	265
Rupa Ashok Hurra *v.* Ashok Hurra, (2002) 4 SCC 388, *relied on*	2	98	108
cited	2	623	629
cited	2	632	642
Rupan Deol Bajaj *v.* Kanwar Pal Singh Gill, (1995) 6 SCC 194 : 1995 SCC (Cri) 1059, *relied on*	2	272	282
relied on	3	188	199
relied on	3	233	241
referred to	3	556	573
S. A. Venkataraman *v.* State, 1958 SCR 1040 : AIR 1958 SC 107 : 1958 Cri LJ 254, *referred to*	1	432	440
S. Abdul Karim *v.* M. K. Prakash, (1976) 1 SCC 975 : 1976 SCC (Cri) 217, *relied on*	1	291	294
S. K. Zutshi *v.* Bimal Debnath, (2004) 8 SCC 31 : 2004 SCC (Cri) 2096, *followed*	1	23	30
relied on	1	432	441
referred to	2	358	387
followed	2	593	607
S. N. Bose *v.* State of Bihar, (1968) 3 SCR 563 : AIR 1968 SC 1292 : 1968 Cri LJ 1484, *relied on*	3	225	232
S. P. Gupta *v.* Union of India, 1981 Supp SCC 87, *relied on*	3	125	150
relied on	3	470	477
S. R. Bommai *v.* Union of India, (1994) 3 SCC 1, *referred to*	2	248	249
relied on	3	438	460
S. S. Dhanoa *v.* Municipal Corpn., Delhi, (1981) 3 SCC 431 : 1981 SCC (Cri) 733 : 1982 SCC (L&S) 6, *relied on*	2	135	140
Sabhajit Tewary *v.* Union of India, (1975) 1 SCC 485 : 1975 SCC (L&S) 99, *referred to*	2	135	141
Sachchey Lal Tiwari *v.* State of U. P., (2004) 11 SCC 410 : 2004 SCC (Cri) Supp 105, *relied on*	2	394	398
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relied on	3	24	28
relied on	3	114	124
Sadhana Lodh *v.* National Insurance Co. Ltd., (2003) 3 SCC 524 : 2003 SCC (Cri) 762, *followed*	2	81	89
Sajan Abraham *v.* State of Kerala, (2001) 6 SCC 692 : 2001 SCC (Cri) 1217, *followed*	1	304	307
Saketh India Ltd. *v.* India Securities Ltd., (1999) 3 SCC 1 : 1999 SCC (Cri) 329, *followed*	2	540	541
Sampat Prakash *v.* State of J&K, (1969) 2 SCR 365 : AIR 1970 SC 1118, *relied on*	3	438	461
Sanjiv Kumar *v.* Om Prakash Chautala, (2005) 5 SCC 524 : (2006) 1 SCC (Cri) 243, *referred to*	1	228	231
(2005) 5 SCC 526 : (2006) 1 SCC (Cri) 244, *referred to*	1	228	235
Sanjiv Kumar *v.* State of Haryana, (2005) 5 SCC 517 : (2006) 1 SCC (Cri) 235, *referred to*	1	228	230
referred to	1	243	243
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Sankaran Moitra *v.* Sadhna Das, (2006) 4 SCC 584 : (2006) 2 SCC (Cri) 358, *relied on*	2	573	581
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Sarbananda Sonowal *v.* Union of India, (2005) 5 SCC 665, *applied*	2	33	35
Sarla Dixit *v.* Balwant Yadav, (1996) 3 SCC 179, *relied on* and *distinguished on facts*	2	81	85
Sarwan Singh *v.* State of Punjab, 1957 SCR 953 : AIR 1957 SC 637 : 1957 Cri LJ 1014, *explained*	1	175	183
(1976) 4 SCC 369 : 1976 SCC (Cri) 646, *relied on*	1	738	743
Satpal *v.* State of Haryana, (2000) 5 SCC 170 : 2000 SCC (Cri) 920, *relied on*	3	438	456

Satvinder Kaur *v.* State (Govt. of NCT of Delhi), (1999) 8 SCC 728 : 1999 SCC (Cri) 1503, *relied on*	2	272	282
relied on	3	233	241
Satvir Singh *v.* State of Punjab, (2001) 8 SCC 633 : 2002 SCC (Cri) 48, *relied on*	1	417	424
relied on	1	417	426
Satya Narain Musadi *v.* State of Bihar, (1980) 3 SCC 152 : 1980 SCC (Cri) 660, *relied on*	3	101	108
Satya Narayan Sharma *v.* State of Rajasthan, (2001) 8 SCC 607 : 2002 SCC (Cri) 39, *cited*	3	245	261
Satyajit Banerjee *v.* State of W. B., (2005) 1 SCC 115 : 2005 SCC (Cri) 276, *referred to*	3	245	265
Sayed Taher Bawamiya *v.* Jt. Secy., Govt. of India, (2000) 8 SCC 630 : 2001 SCC (Cri) 56, *relied on*	1	34	40
Secy. of State for Education and Science *v.* Tameside Metropolitan Borough Council, 1977 AC 1014 : (1976) 3 All ER 665 : (1976) 3 WLR 641 (CA & HL), *cited*	3	438	458
Sekar *v.* State, (2002) 8 SCC 354 : 2003 SCC (Cri) 16, *relied on*	1	696	710
considered and *relied on*	1	696	723
relied on	2	202	208
relied on	3	578	587
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Sevaka Perumal *v.* State of T. N., (1991) 3 SCC 471 : 1991 SCC (Cri) 724, *relied on*	1	499	502
followed	3	1	5
Sevakolandai *v.* Ammayan, ILR (1902) 26 Mad 394, *referred to*	1	470	478
Shaheen Welfare Assn. *v.* Union of India, (1996) 2 SCC 616 : 1996 SCC (Cri) 366, *cited*	2	399	401
Shailendra Pratap *v.* State of U. P., (2003) 1 SCC 761 : 2003 SCC (Cri) 432, *considered* and *relied on*	3	377	383
Shakila Abdul Gafar Khan *v.* Vasant Raghunath Dhoble, (2003) 7 SCC 749 : 2003 SCC (Cri) 1918, *relied on*	2	54	76
relied on	2	54	78
Shakila Khader *v.* Nausheer Cama, (1975) 4 SCC 122 : 1975 SCC (Cri) 379, *followed*	1	661	672
Shambhoo Missir *v.* State of Bihar, (1990) 4 SCC 17 : 1990 SCC (Cri) 518, *considered* and *relied on*	3	377	383
Shambhu Kuer *v.* State of Bihar, (1982) 1 SCC 486 : 1982 SCC (Cri) 264, *relied on*	2	43	48
cited	3	212	223
Shambu Nath Mehra *v.* State of Ajmer, 1956 SCR 199 : AIR 1956 SC 404 : 1956 Cri LJ 794, *relied on*	1	86	93
Shamnsaheb M. Multtani *v.* State of Karnataka, (2001) 2 SCC 577 : 2001 SCC (Cri) 358, *distinguished on facts*	1	191	198
relied on	3	556	570
Shankarlal Kachrabhai *v.* State of Gujarat, (1965) 1 SCR 287 : AIR 1965 SC 1260 : (1965) 2 Cri LJ 266, *relied on*	2	209	211
Shanker Raju Shetty *v.* Union of India, WP No. 640 of 1980 decided on 26-6-1980, *cited*	2	432	441
Shanti *v.* State of Haryana, (1991) 1 SCC 371 : 1991 SCC (Cri) 191, *relied on*	1	309	313
Shanti Prasad Jain *v.* Director of Enforcement, (1963) 2 SCR 297 : AIR 1962 SC 1764, *cited*	2	221	236
Shashikant Singh *v.* Tarkeshwar Singh, (2002) 5 SCC 738 : 2002 SCC (Cri) 1203, *applied*	1	278	279
Cheonandan Paswan *v.* State of Bihar, (1983) 1 SCC 438 : 1983 SCC (Cri) 224, *followed*	1	366	386
Sher Singh *v.* State of Punjab, (1983) 2 SCC 344: 1983 SCC (Cri) 461, *referred to*	1	138	144
Shoukat *v.* State of Rajasthan, 2002 Cri LJ 364 (Raj), *considered*	3	556	576
Shreekantiah Ramayya Munipalli *v.* State of Bombay, (1955) 1 SCR 1177 : AIR 1955 SC 287 : 1955 Cri LJ 857, *relied on*	2	135	138
relied on	2	358	370
referred to	2	358	383
followed	2	593	603
Shri Gopal *v.* Subhash, (2004) 13 SCC 174 : 2005 SCC (Cri) 98, *relied on*	1	696	710
considered and *relied on*	1	696	719
referred to	2	178	200
Shriram *v.* State of M. P., (2004) 9 SCC 292 : 2004 SCC (Cri) 1453, *considered* and *relied on*	1	696	715
Shyam Sunder *v.* State of Rajasthan, (1974) 1 SCC 690, *relied on*	3	433	437
Sidharth *v.* State of Bihar, (2005) 12 SCC 545 : (2006) 1 SCC (Cri) 175, *referred to*	1	470	480
Sita Ram Somani *v.* State of Rajasthan, (1986) 2 SCC 86 : 1986 SCC (Cri) 104, *relied on*	2	432	443
referred to	3	270	275
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State *v.* K. Narasimhachary, (2005) 8 SCC 364 : (2006) 1 SCC (Cri) 41, *relied on* 1 401 406
relied on 1 408 417
State *v.* Nalini, (1999) 5 SCC 253 : 1999 SCC (Cri) 691, *distinguished* 1 175 187
relied on 1 686 692
State *v.* Navjot Sandhu, (2003) 6 SCC 641 : 2003 SCC (Cri) 1545, *relied on* 3 245 261
relied on 3 470 476
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Willie (William) Slaney *v.* State of M. P., (1955) 2 SCR 1140 : AIR 1956 SC 116 : 1956 Cri LJ 291, *referred to*	1	191	198
cited	2	505	512
Yakub Ismailbhai Patel *v.* State of Gujarat, (2004) 12 SCC 229 : 2004 SCC (Cri) Supp 196, *relied on*	3	337	342
Yogendra Morarji *v.* State of Gujarat, (1980) 2 SCC 218 : 1980 SCC (Cri) 394, *considered*	2	178	195
Young *v.* Bristol Aeroplane Co. Ltd., (1944) 2 All ER 293 : 1944 KB 718, *relied on*	3	83	89
Yunis *v.* State of M. P., (2003) 1 SCC 425 : 2003 SCC (Cri) 341, *relied on*	1	160	174
Yusofalli Mulla Noorbhoy *v.* R., AIR 1949 PC 264 : 50 Cri LJ 889 : 76 IA 158, *relied on*	1	47	53
Zahira Habibullah Sheikh (1) *v.* State of Gujarat, (2004) 4 SCC 158 : 2004 SCC (Cri) 999, *referred to*	2	8	16
relied on	2	8	26
referred to	3	245	265
Zahira Habibullah Sheikh (2) *v.* State of Gujarat, (2004) 5 SCC 353 : 2004 SCC (Cri) 1613, *referred to*	2	8	16
Zahira Habibullah Sheikh (3) *v.* State of Gujarat, (2005) 4 SCC 292 : 2005 SCC (Cri) 931, *referred to*	2	8	16
Zahira Habibullah Sheikh (4) *v.* State of Gujarat, (2005) 4 SCC 294 : 2005 SCC (Cri) 932, *referred to*	2	8	16
Zahoor *v.* State of U. P., 1991 Supp (1) SCC 372 : 1991 SCC (Cri) 678, *relied on*	3	408	412
Zakarius Lakra *v.* Union of India, (2005) 3 SCC 161 : 2005 SCC (Cri) 667, *referred to*	2	623	629
relied on	2	632	642
Zandu Pharmaceutical Works Ltd. *v.* Mohd. Sharaful Haque, (2005) 1 SCC 122 : 2005 SCC (Cri) 283, *relied on*	3	188	199

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ADMINISTRATIVE LAW

Synopsis

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1. GENERALLY

[1] — Per Kapadia, J., true value of a decision lies in its propriety and not in the decision being right or wrong — *Judicial process — Generally*

True value of a decision lies in its propriety and not in the decision being right or wrong. In this case the concern is not with the merits of the allegations but strictly with the decision-making process in the posting of Mr Munni Lal Paswan, Special Judge, CBI, Patna. The allegations made in the petitions are not only against the accused, they are also directed against a number of functionaries. It is, therefore, made clear that this decision is only to rectify the procedure of decision-making at the High Court level so that in future such anomalies do not arise. (Paras 76, 100 and 102). *Rajiv Ranjan Singh 'Lalan' (VIII)* v. *Union of India*, (2006) 6 SCC 613: (2006) 3 SCC (Cri) 125.

Bench Strength **3**. Coram: **K.G. Balakrishnan**[1], **Dr. Ar. Lakshmanan**[2] and **S.H. Kapadia**[3], JJ. [Date of decision: 21-8-2006]

2. ADMINISTRATIVE ACTION

(a) Administrative or Executive Function

— Executive orders — Power to issue — Scope — Power to supplement statutory rule *See* 'Subordinate/Delegated legislation' — Administrative/Executive instructions/Circulars/Orders/Guidelines/Norms, below, (2006) 10 SCC 399

— Exercise of power/Discretionary power — Exercise of statutory power — Judicial review of — Scope of *See* 'Judicial review' — Scope of judicial review, (2006) 11 SCC 42

[2] — Time-limit for exercise of discretionary power — *Held, a statutory authority must exercise its jurisdiction within a reasonable time*

It is settled law that an application for grant of permission for construction of a building is required to be decided in accordance with law applicable on the day on which such permission is granted. However, a statutory authority must exercise its jurisdiction within a reasonable time. (Para 18). *T. Vijayalakshmi* v. *Town Planning Member*, (2006) 8 SCC 502.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 19-10-2006]

Director of Public Works v. Ho Po Sang, 1961 AC 901: (1961) 2 All ER 721: (1961) 3 WLR 39 (PC); Howrah Municipal Corpn. v. Ganges Rope Co. Ltd., (2004) 1 SCC 663; Kuldeep Singh v. Govt. of NCT of Delhi, (2006) 5 SCC 702, followed

(b) Review

[3] — Order passed by mistake or ignorance of relevant facts — Reviewability — *Held, such order can be reviewed in case of fraud or wilful suppression of fact* (Para 20). *G. Srinivas* v. *Govt. of A.P.*, (2005) 13 SCC 712: AIR 2005 SC 4455.

Bench Strength **2**. Coram: **S.B. Sinha** and *C.K. Thakker*, JJ. [Date of decision: 20-9-2005]

3. ADMINISTRATIVE BODIES

[4] — Administrative/Statutory authorities — Exercise of statutory power — Mode of passing orders — *Held, statutory functionaries are enjoined with a duty to pass written orders — Concept of issuance of oral direction is unknown in administrative law*

The approach of the trial Judge (while dealing with the contention of the accused regarding failure of the prosecution to produce orders of the Superintendent of Police authorising to take up investigation) was not correct. When a statutory functionary passes an order, that too authorising a person to carry out a public function like investigation into an offence, an order in writing was required to be passed. A statutory functionary must act in a manner laid down in the statute. Issuance of an oral direction is not contemplated under the Act. Such a concept is unknown in administrative law. The statutory functionaries are enjoined with a duty to pass written orders. (Para 16). *State Inspector of Police* v. *Surya Sankaram Karri*, (2006) 7 SCC 172: (2006) 3 SCC (Cri) 225.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 24-8-2006]

[5] — Statutory authorities — Powers and jurisdiction — Different authorities created by same statute to exercise their respective functions — *Held, each of such authority must exercise the functions within the four corners of the statute*

Where a statute creates different authorities to exercise their respective functions thereunder, each of such authority must exercise the functions within the four corners of the statute. When a procedure has been laid down the authority must act strictly in terms thereof. (Paras 27 to 29). *M.P. Wakf Board* v. *Subhan Shah*, (2006) 10 SCC 696.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 31-10-2006]

4. GOVERNMENT DEPARTMENTS/PSUs

— Law officers — Accountability — Imposition of costs for not showing due diligence *See* PREVENTIVE DETENTION — 'Affidavit of Government', (2005) 13 SCC 433

5. JUDICIAL REVIEW

(a) Generally

[6] — Nature and scope — Principles reiterated and discussed (per Arijit Pasayat, J.) — *Stressed that scope of judicial review is limited to the deficiency in decision-making process and not the decision*

Per Arijit Pasayat, J.

Sometimes a power is coupled with a duty. Thus, a limited judicial review against administrative action is always available to the courts. A person entrusted with discretion must, so to speak, direct himself properly in law. He must call his attention to matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules he may truly be said to be acting unreasonably. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. (Paras 239 and 240)

The court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury case*, (1947) 2 All ER 680 (CA), the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision. (Para 232)

The *Wednesbury* principle is often misunderstood to mean that any administrative decision which is regarded by the court to be unreasonable must be struck down. The correct understanding of the *Wednesbury* principle is that a decision will be said to be unreasonable in the *Wednesbury* sense if (*i*) it is based on wholly irrelevant material or wholly irrelevant consideration, (*ii*) it has ignored a very relevant material which it should have taken into consideration, or (*iii*) it is so absurd that no sensible person could ever have reached it. (Para 242). *Rameshwar Prasad (VI)* v. *Union of India*, (2006) 2 SCC 1: AIR 2006 SC 980.

Bench Strength **5**. Coram: **Y.K. Sabharwal, C.J.**[1] and **K.G. Balakrishnan**[2], *B.N. Agrawal*[1], *Ashok Bhan*[1] and **Arijit Pasayat**[3], JJ. [Date of decision: 24-1-2006]

[7] — Nature and scope — Exclusion of State policy or practice from — Scope — *Held, there are no excluded categories of State policy or practice which can claim exemption from judicial consideration*

Judicial review and court craft in environmental adjudications, apart from open and shut cases in the traditional law of nuisance is basically a practice of forging fellowship and a mutuality of concern extended to strangers in nature and in one's own community. There will thus be no excluded categories of State policy or practice which can claim exemption from judicial consideration. Judicial review would therefore have to be the ever sustaining appreciation of the "desert" of all beings in nature and all orders of nature to the possibility of human life and the need to avoid at any cost the high probabilities of not only the extinction of the species but destruction of the rich and wonderful variety of nature's productions. In other words it is more urgent to see judicial review as one of the most immediate means of generating concern for life beyond us and orders sustaining us, in the minds of people wielding economic and social power. (Paras 46 and 48). *O. Konavalov* v. *Commander, Coast Guard Region*, (2006) 4 SCC 620: (2006) 197 ELT 3: (2006) 3 LLN 43.

Bench Strength **2**. Coram: *H.K. Sema* and **Dr. Ar. Lakshmanan**, JJ. [Date of decision: 23-3-2006]

[8] — Scope of judicial review — *Court exercising power of judicial review is concerned with whether the order is ultra vires, illegal or without jurisdiction and not whether it was passed under any wrong provision of law — If the order is found to be intra vires, legal and within jurisdiction, same would not be interfered with merely because it at one point of time had proceeded on a wrong premise — A jurisdictional question can always be raised. K.K. Parmar* v. *H.C. of Gujarat*, (2006) 5 SCC 789: 2006 SCC (L&S) 1201: (2006) 5 SLR 127: (2006) 44 AIC 554 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 12-5-2006]

[9] — Scope — Decision-making process and not merits of the decision can be reviewed. *Jayrajbhai Jayantibhai Patel* v. *Anilbhai Nathubhai Patel*, (2006) 8 SCC 200.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **D.K. Jain**, JJ. [Date of decision: 11-9-2006]

[10] — Scope — Statutory authorities — Exercise of statutory power — *Order passed by statutory authority ignoring the procedure prescribed in law or taking into consideration irrelevant or extraneous matters not germane for decision, held, vitiated in law — Such an error of law is capable of being rectified by judicial review — Reasonableness in the order and/or fairness in the procedure can also be gone into by writ court*

When the statutory authority exercises its statutory powers either in ignorance of the procedure prescribed in law or while deciding the matter takes into consideration irrelevant or extraneous matters not germane therefor, he misdirects himself in law. In such an event, an order of the statutory authority must he held to be vitiated in law. It suffers from an error of law. Such an error of law is capable of being rectified by judicial review. Reasonableness in the order and/or fairness in the procedure can also be gone into by the writ court. (Paras 41 and 42). *V.C., Banaras Hindu University* v. *Shrikant*, (2006) 11 SCC 42: (2007) 1

(a) Generally *(contd.)*

SCC (L&S) 327: AIR 2006 SC 2304: (2006) 4 SLR 769.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 12-5-2006]

[11] — Changing standards and development of law in England, discussed (per Pasayat, J.) (Paras 56, 69, 70, 95 and 96). *Reliance Airport Developers (P) Ltd.* v. *Airports Authority of India*, (2006) 10 SCC 1.

Bench Strength **2**. Coram: **Arijit Pasayat**[1] and **S.H. Kapadia**[2], JJ. [Date of decision: 7-11-2006]

[12] — Judicial review, is confined to the decision-making process

The court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury case* the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. However, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision. (Paras 14 and 15)

The High Court has not kept the correct position in view. It has not even indicated as to why the punishment was considered disproportionate and why it considered the misconduct to be not serious. Therefore, the impugned order of the High Court is set aside and that of the Appellate Authority is restored. (Paras 17 and 18). *Union of India* v. *K.G. Soni*, (2006) 6 SCC 794: 2006 SCC (L&S) 1568: (2006) 3 LLN 838.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 17-8-2006]

(b) Grounds for judicial review

[13] — Exercise of power/Discretionary power — Power of judicial review, when can be exercised — In case of abuse or misuse of power, court can interfere — However, there is no standardised formula — *Each case has to be decided on the basis of its own facts — Factors to be kept in mind in so deciding, indicated*

Article 226 of the Constitution is designed to ensure that each and every authority in the State, including the State, acts bona fide and within the limits of its power. Time and again attempts have been made by the courts to devise or craft some norms, which may be employed to assess whether an administrative action is justiciable or not. But no uniform rule has been or can be evolved to test the validity of an administrative action or decision because the extent and scope of judicial scrutiny depends upon a host of factors, like the nature of the subject-matter, the nature of the right affected, the character of the legal and constitutional provisions applicable, etc. While appreciating the inherent limitations in exercise of the power of judicial review, the judicial quest has been to find and maintain a right and delicate balance between the administrative discretion and the need to remedy alleged unfairness in the exercise of such discretion. (Para 12)

The power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral standards but no standardised formula, universally applicable to all cases, can be evolved. Each case has to be considered on its own facts, depending upon the authority that exercises the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society. Though judicial restraint, albeit self-recognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant considerations or material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it on the given material, may be struck down. In other words, when a court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the court to intervene. It is nevertheless, trite that the scope of judicial review is limited to the deficiency in the decision-making process and not the decision. (Para 18). *Jayrajbhai Jayantibhai Patel* v. *Anilbhai Nathubhai Patel*, (2006) 8 SCC 200.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **D.K. Jain**, JJ. [Date of decision: 11-9-2006]

[14] — Proportionality — Doctrine of — Applicability — *Considering inclination of court from doctrine of Wednesbury unreasonableness to doctrine of proportionality, held, doctrine of proportionality must be applied having regard to the purport and object of the Act concerned* (Para 34). *M.P. Gangadharan* v. *State of Kerala*, (2006) 6 SCC 162: AIR 2006 SC 2360: (2006) 3 KLT 84.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 12-5-2006]

(c) Judicial review of administrative action

— Appointment of Judges by High Court under Arts. 233 and 235 of the Constitution — If open to judicial review by Supreme Court *See* CONSTITUTION OF INDIA, Arts. 233, 235 and 14, (2006) 6 SCC 613

6. NATURAL JUSTICE

(a) Generally

[15] — Applicability — Mode and manner of compliance with principles of natural justice not specifically provided in the statutory provision — *Held, does not imply that it was not necessary to comply with them at all* (Para 26). *Union of India* v. *Millenium Mumbai Broadcast (P) Ltd.*, (2006) 10 SCC 510: AIR 2006 SC 2751.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 28-4-2006]

(b) Applicability of principles of natural justice

See 'Subordinate/Delegated Legislation' — Compliance with Constitution and statutory provisions, below, (2006) 4 SCC 517

(c) Audi alteram partem

— Notice/show-cause — Deportation of an alien from India — Duty of competent authority to inform the person concerned the reasons therefor — Right of the said person to submit his representation against his proposed deportation *See* CONSTITUTION OF INDIA — 'Article 21' — Foreigners, Arts. 21, 19(1)(e) & 73, (2006) 3 SCC 705

— Right to hearing — Reasonable opportunity/Right of representation — Reasonable opportunity — Particular instances *See* SERVICE LAW — 'Departmental enquiry' — Enquiry procedure, (2006) 10 SCC 572

7. SUBORDINATE/DELEGATED LEGISLATION

(a) Generally

[16] — Concept, nature and scope — Delegated legislation, held, cannot take away a right, be it accrued or vested (Para 44). *Mahabir Vegetable Oils (P) Ltd.* v. *State of Haryana*, (2006) 3 SCC 620: (2006) 145 STC 350.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 10-3-2006]

[17] — Concept, nature and scope — Held, a delegatee can make rules only within the four corners of the rule-making power (Para 44). *Mahabir Vegetable Oils (P) Ltd.* v. *State of Haryana*, (2006) 3 SCC 620: (2006) 145 STC 350.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 10-3-2006]

(b) Administrative/Executive instructions/ Circulars/Orders/Guidelines/Norms

[18] — Executive orders — Power to issue — Scope of — Power to supplement statutory rule — Doubt as to whether rules/regulations in question validly framed — *Held, if no rules have been framed in accordance with law, earlier rules validly framed would prevail — A statutory rule cannot be supplemented by an executive order*

The question raised by the appellant would, however, depend upon the validity and/or applicability of the rules. If no rules have been framed in accordance with law, the earlier rules validly framed shall prevail. A statutory rule, it is trite, cannot be supplemented by an executive order. (Para 13). *Feroz Ahmad* v. *Delhi Development Authority*, (2006) 10 SCC 399: (2007) 1 SCC (L&S) 212.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 29-9-2006]

Roop Chand Adlakha v. Delhi Development Authority, 1989 Supp (1) SCC 116: 1989 SCC (L&S) 235: (1989) 9 ATC 639; DDA Graduate Engineers' Assn. v. Lt. Governor of Delhi, 1993 Supp (1) SCC 674: 1993 SCC (L&S) 230: (1993) 23 ATC 770, distinguished

[19] — Role of executive instructions vis-à-vis statutory rules — *Held, these instructions can always supplement the rules which may not deal with every aspect of a matter*

It may also be mentioned that executive instructions can always supplement the Rules which may not deal with every aspect of a matter. Even assuming that Rule 7 did not prescribe any particular minimum, it was open to the High Court to supplement the rule with a view to implement them by prescribing relevant standards in the advertisement for selection. (Para 62). *K.H. Siraj* v. *High Court of Kerala*, (2006) 6 SCC 395: 2006 SCC (L&S) 1345: AIR 2006 SC 2339: (2006) 3 LLN 19: (2006) 2 KLT 923.

Bench Strength **2**. Coram: **Dr. Ar. Lakshmanan** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 23-5-2006]

(c) Compliance with Constitution and statutory provisions

[20] — Compliance with provisions of parent statute — Necessity of (Paras 16 to 18). *Sarbananda Sonowal (II)* v. *Union of India*, (2007) 1 SCC 174.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 5-12-2006]

[21] — Validity of subordinate legislation — Conformity with requirements of parent Act — *Where enabling Act, whereunder the delegated legislation made, requires compliance with natural justice principles before affecting lessee's rights, delegated legislation even though legislative in character, if does not require such compliance, will be invalid on ground of violation of natural justice. State of T.N.* v. *P. Krishnamurthy*, (2006) 4 SCC 517: AIR 2006 SC 1622.

Bench Strength **2**. Coram: *Arun Kumar* and **R.V. Raveendran**, JJ. [Date of decision: 24-3-2006]

(d) Notifications

[22] — **Date of coming into force of notifications affecting rights of parties in State of U.P.** — *Held, is date of publication in Official Gazette and not date of notification — Hence notification under S. 4(a), POTA, 2002, being a prohibitory notification would come into effect in State of U.P. only on date of its publication in the Official Gazette — General Clauses Act, 1897, S. 5 — U.P. General Clauses Act, 1904, S. 5*

The notification notifying the State of U.P. as a notified area under Section 4(*a*) was published in the Extraordinary Gazette of U.P. on 29-1-2003. Therefore, it became effective from the date of its publication. Normally under the State General Clauses Act, an Act comes into force on the date when the assent of the Governor or the President, as the case may be, is first published in the Official Gazette of the State. Therefore, publication in the gazette is essential as it affects the rights of the public. Since this prohibitory notification notifying that the possession of certain kinds of arms in the notified area is prohibited, therefore, it would come into effect from the date when it was published in the Official Gazette. Hence the view taken by the Review Committee to this extent is correct that the whole area was notified on 29-1-2003 only and not on 23-1-2003, the date of the notification and therefore the notification under Section 4(*a*) had not come into existence at the time when the raid at the premises of Udai Pratap Singh was conducted. As a result of this finding the charge under Section 4(*a*) cannot be sustained. (Paras 18 and 19). *S.K. Shukla* v. *State of U.P.*, (2006) 1 SCC 314: (2006) 1 SCC (Cri) 366: AIR 2006 SC 413: 2006 Cri LJ 148.

Bench Strength **2**. Coram: *B.N. Agrawal* and **A.K. Mathur**, JJ. [Date of decision: 10-11-2005]

— Letter rescinding a notification if on facts, was a notification *See* CONSTITUTION OF INDIA, Art. 166, (2006) 7 SCC 188

[23] — **Power to issue notifications and orders by the State — Scope of** — *Held, includes power to amend, vary or rescind notifications and orders — General Clauses Act, 1897, S. 21*

In terms of Section 21 of the General Clauses Act, 1897, the power to issue would include the power to amend, vary or rescind, notifications and orders. If a notification could be issued establishing a Family Court at Manjeri, there is no reason why another notification cannot be issued by the State to shift the said court to another place but within the same area of the Family Court. In terms of Section 21 of the General Clauses Act, the State Government will indisputably have jurisdiction to abolish a Family Court and establish one at another place. If such an extensive jurisdiction can be exercised by the State, there is no reason as to why its jurisdiction should be held to be limited in the matter of shifting of court from one place to another but within the same area, particularly, in view of the fact that in terms of sub-section (2) of Section 3 of the Family Courts Act even a change in the area is permissible. (Para 14). *M.P. Gangadharan* v. *State of Kerala*, (2006) 6 SCC 162: AIR 2006 SC 2360: (2006) 3 KLT 84.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 12-5-2006]

(e) Validity/Constitutionality

[24] — **Grounds for, discussed — Held, subordinate legislation shall be susceptible to challenge even on the ground that provisions of the parent Act are unreasonable**

The court ordinarily is required to consider the constitutionality of the subordinate legislation within the accepted norms and parameters of judicial review. A subordinate legislation apart from being intra vires the Constitution, should not also be ultra vires the parent Act under which it has been made. A subordinate legislation must be reasonable and in consonance with the legislative policy as also give effect to the purport and object of the Act and in good faith. Subordinate legislation can also be challenged if it is violative of the legislative object or if the reasons assigned therefor are not germane or otherwise mala fide. Unreasonableness is certainly a ground of striking down a subordinate legislation. (Paras 196, 104 to 106, 117 and 154). *Bombay Dyeing & Mfg. Co. Ltd. (3)* v. *Bombay Environmental Action Group*, (2006) 3 SCC 434: AIR 2006 SC 1489.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 7-3-2006]

[25] — **Presumption in favour of validity/constitutionality — Burden on person challenging it to show that it is invalid** — *Grounds for challenging validity and court's approach and considerations while examining validity of a subordinate legislation*

There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:

(*a*) Lack of legislative competence to make the subordinate legislation.

(*b*) Violation of fundamental rights guaranteed under the Constitution.

(*c*) Violation of any provision of the Constitution.

(*d*) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

(*e*) Repugnancy to the laws of the land, that is, any enactment.

(*f*) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules). (Para 15)

The court considering the validity of a subordinate legislation will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity. (Para 16). *State of T.N.* v. *P. Krishnamurthy*, (2006) 4 SCC 517: AIR 2006 SC 1622.

Bench Strength **2**. Coram: *Arun Kumar* and **R.V. Raveendran**, JJ. [Date of decision: 24-3-2006]

ADVISORY BOARD

See PREVENTIVE DETENTION

ADVOCATES

1. ADVOCATES ACT, 1961

[26] — Ss. 6 and 7, 35, 36 and 37 — Duties of Bar Councils vis-à-vis courts and the law — Prevention of strikes/boycotts and taking of disciplinary action. *Common Cause, A Registered Society* v. *Union of India*, (2006) 9 SCC 295: (2006) 2 SCC (Cri) 493: AIR 2005 SC 4442: (2005) 123 DLT 664: (2005) 4 CPJ 4 (SC): 2005 Cri LJ 4978: (2006) 36 AIC 135 (SC).

Bench Strength **3**. Coram: *S.N. Variava*, *Dr. Ar. Lakshmanan* and *S.H. Kapadia*, JJ. [Date of decision: 28-9-2005]

Ex Capt. Harish Uppal v. Union of India, (2003) 2 SCC 45; Mahabir Prasad Singh v. Jacks Aviation (P) Ltd., (1999) 1 SCC 37; Ramon Services (P) Ltd. v. Subhash Kapoor, (2001) 1 SCC 118: 2001 SCC (Cri) 3: 2001 SCC (L&S) 152; Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409, followed

[27] — Ss. 6 and 7, 35, 36 and 37 — Duties of Bar Councils vis-à-vis courts and the law — Prevention of strikes/boycotts and taking of disciplinary action

It is also suggested to the Bar Councils and Bar Associations that in order to clear the pitch and to uphold the high traditions of the profession as well as to maintain the unity and integrity of the Bar, they consider dropping action already initiated against their members who had appeared in courts notwithstanding strike calls given by any Bar Council or Bar Association. Besides, members of the legal profession should be alive to the possibility of judges of different courts refusing adjournments merely on the ground of there being a strike call and insisting on proceeding with cases. (Para 3). *Common Cause, A Registered Society* v. *Union of India*, (2006) 9 SCC 304: (2006) 2 SCC (Cri) 501.

Bench Strength **3**. Coram: *A.M. Ahmadi*, *C.J.* and *R.M. Sahai* and *N. Venkatachala*, JJ. [Date of decision: 7-12-1994]

— S. 7 *See* Ss. 6 and 7, 35, 36 and 37

— S. 35 *See* Ss. 6 and 7, 35, 36 and 37

— Ss. 35, 36, 37 and 38 — Disciplinary action for strike/boycott — Need for immediate *See* 'Strike/Boycott by Lawyers', below, (2006) 9 SCC 295

— S. 36 *See* Ss. 6 and 7, 35, 36 and 37

See also Ss. 35, 36, 37 and 38

— S. 37 *See* Ss. 6 and 7, 35, 36 and 37

See also Ss. 35, 36, 37 and 38

— S. 38 *See* Ss. 35, 36, 37 and 38

2. BAR COUNCIL OF INDIA (CONDUCT AND DISCIPLINARY) RULES

[28] — Directions issued in *Harish Uppal case*, (2003) 2 SCC 45, para 2 — Incorporation of said directions in the said Rules — *Bar Council of India directed to incorporate the same* (Para 3). *Common Cause, A Registered Society* v. *Union of India*, (2006) 9 SCC 295: (2006) 2 SCC (Cri) 493: AIR 2005 SC 4442: (2005) 123 DLT 664: (2005) 4 CPJ 4 (SC): 2005 Cri LJ 4978: (2006) 36 AIC 135 (SC).

Bench Strength **3**. Coram: *S.N. Variava*, *Dr. Ar. Lakshmanan* and *S.H. Kapadia*, JJ. [Date of decision: 28-9-2005]

3. STRIKE/BOYCOTT BY LAWYERS

[29] — Permissibility — Action to be taken against Bar Associations/lawyers instigating/participating in strikes — Role of State Bar Councils and Bar Council of India — *Need for immediate disciplinary action, and imposition of costs by courts in addition to compensation payable by advocate to client for loss suffered due to his non-appearance — Role of Supreme Court as final Appellate Authority under S. 38, Advocates Act — Advocates Act, 1961, Ss. 35, 36, 37 and 38. Common Cause, A Registered Society* v. *Union of India*, (2006) 9 SCC 295: (2006) 2 SCC (Cri) 493: AIR 2005 SC 4442: (2005) 123 DLT 664: (2005) 4 CPJ 4 (SC): 2005 Cri LJ 4978: (2006) 36 AIC 135 (SC).

Bench Strength **3**. Coram: *S.N. Variava*, *Dr. Ar. Lakshmanan* and *S.H. Kapadia*, JJ. [Date of decision: 28-9-2005]

Ex Capt. Harish Uppal v. Union of India, (2003) 2 SCC 45; Mahabir Prasad Singh v. Jacks Aviation (P) Ltd., (1999) 1 SCC 37; Ramon Services (P) Ltd. v. Subhash Kapoor, (2001) 1 SCC 118: 2001 SCC (Cri) 3: 2001 SCC (L&S) 152; Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409, followed

[30] — **Permissibility — Interim directions** — *Instead of going into the said wider question, interim directions [as set out in para 2 herein] as suggested by Bar Council of India, directed to be in operation for six months under oversight of Supreme Court — Suggestion of counsel for Bar Council of India that it incorporate said interim directions in the Bar Council of India (Conduct and Disciplinary) Rules, so that they may have statutory support, taken on board — Bar Councils and Associations directed to drop action already initiated against members who had defied strike/boycott calls on earlier occasions — Advocates Act, 1961, Ss. 35, 36, 37 and 38. Common Cause, A Registered Society* v. *Union of India*, (2006) 9 SCC 304: (2006) 2 SCC (Cri) 501.

Bench Strength **3**. Coram: *A.M. Ahmadi, C.J.* and *R.M. Sahai* and *N. Venkatachala*, JJ. [Date of decision: 7-12-1994]

Common Cause, A Registered Society v. Union of India, (1994) 5 SCC 557, referred to

AFFIDAVIT OF GOVERNMENT

See PREVENTIVE DETENTION

AGE

See also EDUCATION

See also PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Statutory rape — Underage victim, S. 376 Sixthly, (2006) 5 SCC 736

— Proof of — School-leaving certificate, if on facts *See* EVIDENCE ACT, 1872, S. 35, (2006) 5 SCC 584

ALIENS

See CITIZENSHIP, MIGRANTS AND ALIENS

See also INTERNATIONAL LAW

APPEAL

— Nature and scope — Enlargement of statutorily restricted grounds of appeal by filing of writ petition under Arts. 226/227 of Constitution — Impermissibility *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 173, 170 and 149(2), (2006) 3 SCC 242

APPEAL AGAINST ACQUITTAL

See CRIMINAL TRIAL

APPELLATE COURT'S APPROACH

See CRIMINAL TRIAL — 'Appreciation of evidence'

APPRECIATION OF EVIDENCE

See CRIMINAL TRIAL

See also PENAL CODE, 1860 — 'Section 302 — Murder Trial'

ARMED FORCES

ARMY ACT, 1950

— Ss. 71(a) and 69 — Death sentence — Imposition of — Question relating to — Determination of — Necessity of drawing up balance sheet of aggravating and mitigating circumstances *See* PENAL CODE, 1860 — 'Section 302 — Murder Trial' — Sentence — Death Sentence, Ss. 302 and 307, (2006) 2 SCC 243

ARMS ACT, 1959

— S. 27 *See* PENAL CODE, 1860 — 'Section 302 — Murder Trial' — Appreciation of evidence, Ss. 302/149, (2005) 13 SCC 205

ASSOCIATIONS, SOCIETIES AND CLUBS

SOCIETIES REGISTRATION ACT, 1860

[31] — **Ss. 28, 4 and 27 — Scope and applicability** — *High Court quashing the charge-sheet submitted under various provisions of IPC by applying S. 28 of the Act, observing that some other allegations prima facie made out an offence under S. 4 of the Act and hence, since provisions of S. 28 were breached, the proceedings were unsustainable — Held, S. 28 provides procedure for trial of offences punishable under the 1860 Act itself and not for offences punishable under the Penal Code — Hence, impugned order set aside and matter remanded to trial court for decision afresh — Penal Code, 1860, Ss. 419, 420, 467 and 468 — Criminal Procedure Code, 1973, S. 482* (Paras 3, 5 and 6). *Sarvesh Kumar Singh* v. *Jai Govind Mishra*, (2006) 9 SCC 206: (2006) 2 SCC (Cri) 618.

Bench Strength **2**. Coram: *B.P. Singh* and *R.V. Raveendran*, JJ. [Date of decision: 21-11-2005]

BAIL

See also CRIMINAL TRIAL

See also CONSTITUTION OF INDIA — 'Article 136', 'Article 226'

See also PENAL CODE, 1860 — 'Section 302 — Murder Trial'

BALLISTICS

See MEDICAL JURISPRUDENCE

BANKING REGULATION ACT, 1949

See BANKS

BANKS

BANKING REGULATION ACT, 1949

— Ss. 18, 24 and 35-A *See* CONSTITUTION OF INDIA — 'Article 136' — Scope of interference — Interference in criminal matters — Bail denied, Art. 136, (2006) 1 SCC 732

BAR COUNCIL OF INDIA (CONDUCT AND DISCIPLINARY) RULES

See ADVOCATES

BENEFIT OF ACQUITTAL TO CO-ACCUSED

See CRIMINAL TRIAL

BENGAL EXCISE ACT, 1909 (5 OF 1909)
See EXCISE

BIHAR CHILDREN ACT, 1982 (54 OF 1982)
See CHILDREN ACTS

BIHAR NON-GOVERNMENT SANSKRIT SCHOOLS (TAKING OVER AND CONTROL) ORDINANCE (32 OF 1989), (7 OF 1990) AND (21 OF 1990)
See EDUCATION

BLOODMARKS/TRAIL AND BLOODSTAINS
See CRIMINAL TRIAL

BOMBAY CHILDREN ACT, 1948 (71 OF 1948)
See CHILDREN ACTS

BOMBAY POLICE ACT, 1951 (22 OF 1951)
See POLICE

BRIDE BURNING
See CRIMES AGAINST WOMEN AND CHILDREN

BURDEN OF PROOF
See CRIMINAL TRIAL

CBI
See POLICE
See also PUBLIC ACCOUNTABILITY AND VIGILANCE — 'Vigilance Authorities'

CENTRAL VIGILANCE COMMISSION ACT, 2003
See PUBLIC ACCOUNTABILITY AND VIGILANCE

CHILD WITNESS
See CRIMINAL TRIAL — 'Witnesses'

CHILDREN ACTS

1. BIHAR CHILDREN ACT, 1982 (54 OF 1982)

— Ss. 2(d) and 32 *See* CRIMINAL TRIAL — 'Juvenile/Child accused', (2006) 9 SCC 428

2. BOMBAY CHILDREN ACT, 1948 (71 OF 1948)

— S. 57 *See* PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Conviction on sole testimony of prosecutrix, Ss. 375, 376 and 366, (2006) 1 SCC 283

3. U.P. CHILDREN ACT, 1951 (1 OF 1952)

— S. 2(4) *See* CRIMINAL TRIAL — 'Juvenile/Child accused', (2006) 5 SCC 584
See also EVIDENCE ACT, 1872, S. 35, (2006) 5 SCC 584

CIRCUMSTANTIAL EVIDENCE

See CRIMINAL TRIAL

CITIZENSHIP, MIGRANTS AND ALIENS

1. ALIENS

— Deportation of — Procedure for *See* CONSTITUTION OF INDIA — 'Article 21' — Foreigners, Arts. 21, 19(1)(e) & 73, (2006) 3 SCC 705

2. FOREIGNERS ACT, 1946

— Ss. 3 & 11 *See* CONSTITUTION OF INDIA — 'Article 21' — Foreigners, Arts. 21, 19(1)(e) & 73, (2006) 3 SCC 705

3. PASSPORT (ENTRY INTO INDIA) ACT, 1920

— S. 5 *See* CONSTITUTION OF INDIA — 'Article 21' — Foreigners, Arts. 21, 19(1)(e) & 73, (2006) 3 SCC 705

COMMON INTENTION
See CRIMINAL TRIAL — 'Appreciation of evidence'

COMMUNICATION OF GROUNDS OF DETENTION
See PREVENTIVE DETENTION

COMPENSATION
See CONSTITUTION OF INDIA — 'Article 21', 'Article 32', 'Article 226'

COMPENSATION TO RAPE VICTIM
See CRIMES AGAINST WOMEN AND CHILDREN
See also PENAL CODE, 1860 — 'Sections 375 and 376 — Rape'

COFEPOSA, 1974
See PREVENTIVE DETENTION — 'Particular Statutes'

CONSIDERATION OF REPRESENTATION BY APPROPRIATE AUTHORITY INDEPENDENT OF REFERENCE TO ADVISORY BOARD
See PREVENTIVE DETENTION — 'Representation to appropriate authority/Govt.'

CONSTITUTION OF INDIA

[32] — Generally — Appointment of constitutional authorities — Factors to be considered — *Per Dalveer Bhandari, J., it is absolutely imperative that only people of high integrity, merit, rectitude and honesty are appointed to constitutional positions* (Para 102). *Inderpreet Singh Kahlon* v. *State of Punjab*, (2006) 11 SCC 356: (2007) 1 SCC (L&S) 444: AIR 2006 SC 2571.

Bench Strength **2**. Coram: **S.B. Sinha**[1] and **Dalveer Bhandari**[2], JJ. [Date of decision: 3-5-2006]

— Preamble *See* Arts. 21, 25, 19(1)(a), 32, 38, 51-A(e) and Preamble
See also Arts. 32, 136, 142, 144 and Preamble
— Art. 1 *See* Arts. 21 and 1
— Art. 2 *See* Arts. 22 and 2
— Art. 12 *See* Arts. 215 and 12
— Art. 13 *See* Arts. 215 and 13

ARTICLE 14

— Art. 14 *See* Arts. 21 and 14
See also Arts. 21, 14 and 15
See also Arts. 233, 235 and 14

(a) Arbitrariness/Discretionary Power

[33] — Art. 14 — Discretionary power — *Mere absence of provision for representation/appeal, held, would not render the provision arbitrary or discriminatory when such power was exercised by the highest*

(a) Arbitrariness/Discretionary Power *(contd.)*

authority and for specified reason — In any case judicial review under Art. 226 is maintainable. Indian Airlines Ltd. v. *Prabha D. Kanan*, (2006) 11 SCC 67: (2007) 1 SCC (L&S) 359.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 10-11-2006]

Babubhai & Co. v. State of Gujarat, (1985) 2 SCC 732, followed

— Art. 14 — Manner of exercise of discretionary power — Requirements and limitations on *See* ADMINISTRATIVE LAW — 'Administrative action' — Administrative or executive function — Exercise of Power/discretionary power, (2006) 8 SCC 502

(b) Classification/Underclassification/Discrimination

— Arts. 14, 21 & 31-B and Sch. IX, Item 100 *See* FOREIGN EXCHANGE REGULATION ACT, 1973, (2006) 4 SCC 278; Ss. 50, 51, 56 and 68, (2006) 4 SCC 278

— Art. 15 *See* Arts. 21, 14 and 15

ARTICLE 19

Synopsis

(a) Article 19(1)(a) — Freedom of Press
(b) Article 19(1)(a) — Right of adults to entertainment
(c) Article 19(2) — Reasonable restrictions

(a) Article 19(1)(a) — Freedom of Press

— Art. 19(1)(a) *See* Arts. 21, 25, 19(1)(a), 32, 38, 51-A(e) and Preamble

[34] — Arts. 19(1)(a) & (2) — Freedom of press — Scope of — Protection of minors/children from harmful and disturbing materials — *Petitioner praying for mandamus for laying down of rules/regulations to ensure that minors are not exposed to sexually oriented material being published, especially in the entertainment sections of certain national newspapers, without express consent of parents, guardians or sex education experts and for constitution of an expert committee in respect of the same, etc. — Sustainability of — Held, the incidence of shielding minors should not be that the adult population is restricted to read and see what is fit for children — There should be no suppression of speech and expression supposedly to protect children from harmful materials — In view of sufficient safeguards available in terms of various legislations, norms, rules and regulations to protect society in general under Press Council Act, 1978, Penal Code, etc. and children in particular from obscene and prurient content, said writ petition is not maintainable — Further, Respondents 3 and 4, the leading newspaper/dailies concerned have a self-regulatory mechanism in place and have to strictly adhere to standards set under Press Council Act, 1978 — Pictures in dispute had been published by respondents with intent to inform readers of the current entertainment news from around the world and India, and should not be viewed in isolation and should be read with the news reports annexed to them — In case a particular news item or picture offends any person, they may avail of the remedies available under law, or subscribe to some other newspaper — Any steps to impose a blanket ban on publication of such pictures would amount to prejudging the matter — Inculcation of culture of "responsible reading" to be encouraged — Govt. urged to seriously consider request of Press Council to amend S. 14 of Press Council Act, 1978 Act so as to give Council more teeth — Penal Code, 1860, Ss. 292 and 293 — Indecent Representation of Women (Prohibition) Act, 1986, Ss. 3, 4 and 6 — Press Council Act, 1978, Ss. 13(2)(c), 14(1) & (2) — Crimes against Women and Children — Indecent representation of women*

The petitioner's grievance was that the freedom of speech and expression enjoyed by the newspaper industry was not in balance with the protection of children from harmful and disturbing materials. That though the press is free to express its ideas, at the same time, individuals also have a right to their own space and the right not to be exposed against their will to other's expressions of ideas and actions.

By way of this petition, the petitioner requested the Court to direct the authorities to strike a reasonable balance between the fundamental right of freedom of speech and expression enjoyed by the press and the duty of the Government, being signatory to the United Nations Convention on the Rights of the Child, 1989 and the Universal Declaration of Human Rights, to protect vulnerable minors from abuse, exploitation and harmful effects of such expression. The petitioner requested the Court to direct the authorities concerned to provide for classification or introduction of a regulatory system for facilitating climate of reciprocal tolerance which could include:

(*a*) an acceptance of other people's rights to express and receive certain ideas and actions; and

(*b*) accepting that other people have the right not to be exposed against their will to one's expression of ideas and actions.

The reciprocal tolerance was further necessary considering the growing tendency amongst youngsters and minors of indulging in X-rated jokes, SMSs and MMSs. Nudity in photographs, discussions on sex matters, double-meanings, etc. titillate and confuse young minds.

The lawyer petitioner who appeared in person submitted that he had filed this petition to seek protection from the Supreme Court to ensure that minors

were not exposed to sexually exploitative materials, whether or not the same were obscene or were within the law. The real objective was that the nature and extent of the material having sexual content should not be exposed to minors indiscriminately and without regard to the age of the minor. The discretion in this regard should vest with the parents, guardians, teachers or experts on sex education.

The petitioner was not in any way seeking restraint on the freedom of press or any censorship prior to the publication of article or other material. The petitioner was only seeking for regulation at the receiving end and not at the source.

Dismissing the writ petition,

Held :

The incidence of shielding minors should not be that the adult population is restricted to read and see what is fit for children. *There should be no suppression of speech and expression in protecting children from harmful materials*. (Paras 62 and 64)

In view of the availability of sufficient safeguards in terms of various legislations, norms and rules and regulations to protect society in general under the Press Council Act, 1978, Penal Code, etc. and children, in particular, from obscene and prurient content the writ petition is not maintainable. The present scenario provides for a regulatory framework under which punishment is prescribed for flouting the standards set by the Press Council of India by newspapers/print media. Further, Respondents 3 and 4, *Times of India* and *Hindustan Times*, have a self-regulatory mechanism in place and they have to strictly adhere to the standards set by the Press Council Act, 1978. (Paras 55, 48 and 73)

The pictures in dispute had been published by the respondents with the intent to inform readers of the current entertainment news from around the world and India. The respondents' newspapers seek to provide a wholesome reading experience offering current affairs, sports, politics as well as entertainment news to keep its readers abreast of all the latest happenings in the world. The pictures that have been published should not be viewed in isolation, rather they have to be read with the news reports next to them. In the event that a particular news item or picture offends any person they may avail of the remedies available to them under the present legal framework. Any steps to impose a blanket ban on publishing of such photographs would amount to prejudging the matter. Any steps to ban publishing of certain news pieces or pictures would fetter the independence of free press, which is one of the hallmarks of our democratic set-up. The present petition is liable to be dismissed as the petitioner has failed to establish the need and requirement to curtail the freedom of speech and expression. News is not limited to *Times of India* and *Hindustan Times*. Any hypersensitive person can subscribe to many other newspapers of their choice, which might not be against the standards of morality of the person concerned. (Paras 74, 78 and 81)

Respondents 3 and 4 are conscious of their responsibility towards children but at the same time it would be inappropriate to deprive the adult population of the entertainment which is well within the acceptable levels of decency on the ground that it may not be appropriate for the children. An imposition of a blanket ban on the publication of certain photographs and news items, etc. will lead to a situation where the newspaper will be publishing material which caters only to children and adolescents and adults will be deprived of reading their share of the entertainment which can be permissible under the normal norms of decency in any society. (Para 78)

In the present matter, the petitioner has failed to establish his case clearly. The petitioner only states that the pictures and the news items that are published by Respondents 3 and 4 "leave much for the thoughts of minors". The fertile imagination of anybody, especially of minors, should not be a matter that should be agitated in the court of law. (Paras 80 and 81)

Therefore, Prayer 1 in the writ petition praying that the Court may issue writ in the nature of writ of mandamus/order or direction to Respondents 1 and 2 for laying down rules/regulations to ensure that minors are not exposed to sexually explicit material whether or not the same is obscene or is within the law, without express consent of the parents, guardians or the experts on sex education, cannot at all be countenanced. Prayer 2, is equally vague and no case has been made out for constituting an expert committee. (Paras 45, 48 and 49)

A culture of "responsible reading" should be inculcated among the readers of any news article. No news item should be viewed or read in isolation. It is necessary that a publication must be judged as a whole and news items, advertisements or passages should not be read without the accompanying message that is purported to be conveyed to the public. Also the members of the public and readers should not look for meanings in a picture or written article, which are not conceived to be conveyed through the picture or the news item. (Para 79)

The request made by the Press Council of India to amend Section 14(1) of the Press Council Act, 1978 to arm the Council with the authority to recommend to the Government derecognition of newspapers for government advertisements or withdrawal of the accreditation granted to a journalist which facilitates

performance of his function and also entitles him to claim concession in railways, etc. or to recommend derecognition of a newspaper for the period deemed appropriate for the proposals made, should be seriously looked into by the Government of India and appropriate amendments be made in public interest. (Paras 82 and 73). *Ajay Goswami* v. *Union of India*, (2007) 1 SCC 143: (2007) 1 SCC (Cri) 298.

Bench Strength **2**. Coram: **Dr. Ar. Lakshmanan** and *Tarun Chatterjee*, JJ. [Date of decision: 12-12-2006]

Fraser v. Evans, (1969) 1 QB 349: (1968) 3 WLR 1172: (1969) 1 All ER 8 (CA), approved

(b) Article 19(1)(a) — Right of adults to entertainment

[35] — Art. 19(1)(a) — Right of adults to entertainment — Recognition of — *Observed, it would be inappropriate to deprive the adult population of the entertainment which is well within the acceptable levels of decency on the ground that it may not be appropriate for children*

The incidence of shielding minors should not be that the adult population is restricted to read and see what is fit only for children. (Paras 62 and 64)

It would be inappropriate to deprive the adult population of the entertainment which is well within the acceptable levels of decency on the ground that it may not be appropriate for the children. An imposition of a blanket ban on the publication of certain photographs and news items, etc. will lead to a situation where the newspaper will be publishing material which caters only to children and adolescents and adults will be deprived of reading their share of the entertainment which can be permissible under the normal norms of decency in any society. (Para 78). *Ajay Goswami* v. *Union of India*, (2007) 1 SCC 143: (2007) 1 SCC (Cri) 298.

Bench Strength **2**. Coram: **Dr. Ar. Lakshmanan** and *Tarun Chatterjee*, JJ. [Date of decision: 12-12-2006]

— Art. 19(1)(e) *See* Arts. 21, 19(1)(e) & 73

(c) Article 19(2) — Reasonable restrictions

— Art. 19(2) *See* Arts. 19(1)(a) & (2)

[36] — Art. 19(2) — "Obscenity" — Meaning of — Restriction of freedom of expression on ground of obscenity — Considerations and concerns involved — *Impact of cultural and community differences, contemporary mores and national standards, discussed — Redundancy/obsolescence of test of "community mores and standards" in light of worldwide availability of material over the internet, posited — Words and Phrases — "Obscenity" — Penal Code, 1860, Ss. 292 and 293 — Indecent Representation of Women (Prohibition) Act, 1986, Ss. 3, 4 and 6*

The term obscenity is most often used in a legal context to describe expressions (words, images, actions) that offend the prevalent sexual morality. On the other hand the Indian Constitution guarantees the right to freedom of speech and expression to every citizen. This right will encompass an individual's take on any issue. However, this right is not absolute, if such speech and expression is immensely gross and will badly violate the standards of morality of a society. Therefore, any expression is subject to reasonable restriction. Freedom of expression has contributed much to the development and well-being of our free society. This right conferred by the Constitution has triggered various issues. One of the most controversial issues is balancing the need to protect society against the potential harm that may flow from obscene material, and the need to ensure respect for freedom of expression and to preserve a free flow of information and ideas. (Paras 76 and 77)

In judging as to whether a particular work is obscene, regard must be had to contemporary mores and national standards. While the Supreme Court in India held *Lady Chatterley's Lover* to be obscene, in England the jury acquitted the publishers finding that the publication did not fall foul of the obscenity test. This was heralded as a turning point in the fight for literary freedom in UK. Perhaps "community mores and standards" played a part in the Indian Supreme Court taking a different view from the English jury. The test has become somewhat outdated in the context of the internet age which has broken down traditional barriers and made publications from across the globe available with the click of a mouse. (Para 67). *Ajay Goswami* v. *Union of India*, (2007) 1 SCC 143: (2007) 1 SCC (Cri) 298.

Bench Strength **2**. Coram: **Dr. Ar. Lakshmanan** and *Tarun Chatterjee*, JJ. [Date of decision: 12-12-2006]

[37] — Art. 19(2) — "Obscenity" — Standard to be adopted for judging obscenity, held, should be that of an ordinary man of common sense and prudence and not an "out of the ordinary or hypersensitive man" — *Penal Code, 1860, Ss. 292 and 293 — "Obscenity" — Standard to be adopted for judging obscenity — Indecent Representation of Women (Prohibition) Act, 1986, Ss. 3, 4 and 6*

The test for judging a work should be that of an ordinary man of common sense and prudence and not an "out of the ordinary or hypersensitive man". The definition of obscenity differs from culture to culture, between communities within a single culture, and also between individuals within those communities. Many cultures have produced laws to define what is considered to be obscene, and censorship is often used to try to suppress or control materials that are obscene under

these definitions. (Paras 71 and 75). *Ajay Goswami* v. *Union of India*, (2007) 1 SCC 143: (2007) 1 SCC (Cri) 298.

Bench Strength **2**. Coram: **Dr. Ar. Lakshmanan** and *Tarun Chatterjee*, JJ. [Date of decision: 12-12-2006]

[38] — Art. 19(2) — Imposition of restriction on a publication — Publication whether "obscene" — Approach to be taken — Need for publication to be viewed as a whole — *Penal Code, 1860, Ss. 292 and 293 — Indecent Representation of Women (Prohibition) Act, 1986, Ss. 3, 4 and 6*

It is necessary that publication must be judged as a whole and the impugned publication should also separately be examined so as to judge whether the impugned passages are so grossly obscene and are likely to deprave and corrupt. (Para 68)

A culture of "responsible reading" should be inculcated among the readers of any news article. No news item should be viewed or read in isolation. It is necessary that a publication must be judged as a whole and news items, advertisements or passages should not be read without the accompanying message that is purported to be conveyed to the public. Also the members of the public and readers should not look for meanings in a picture or written article, which are not conceived to be conveyed through the picture or the news item. (Para 79). *Ajay Goswami* v. *Union of India*, (2007) 1 SCC 143: (2007) 1 SCC (Cri) 298.

Bench Strength **2**. Coram: **Dr. Ar. Lakshmanan** and *Tarun Chatterjee*, JJ. [Date of decision: 12-12-2006]

[39] — Art. 19(2) — Imposition of restrictions on freedom of expression — Requirements for — *Applicability of American test of "clear and present danger" — Reiterated, the anticipated danger should not be remote, conjectural or far-fetched, and should have a proximate and direct nexus with the expression sought to be restricted — Further, State must show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint*

The commitment to freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have a proximate and direct nexus with the expression. The expression of thought that is impugned should be intrinsically dangerous to the public interest. The expression of thought should be like the equivalent of a "spark in a power keg". In order for the State to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. (Paras 70 and 80)

The incidence of shielding minors should not be that the adult population is restricted to read and see what is fit for children. *There should be no suppression of speech and expression in protecting children from harmful materials.* (Paras 62 and 64). *Ajay Goswami* v. *Union of India*, (2007) 1 SCC 143: (2007) 1 SCC (Cri) 298.

Bench Strength **2**. Coram: **Dr. Ar. Lakshmanan** and *Tarun Chatterjee*, JJ. [Date of decision: 12-12-2006]

Fraser v. Evans, (1969) 1 QB 349: (1968) 3 WLR 1172: (1969) 1 All ER 8 (CA), approved

[40] — Art. 19(2) — Obscenity and art — Test to be applied in determining whether work in question is obscene or a work of art — Role of experts — Changing views of Supreme Court, highlighted — *Held, where art and obscenity are mixed, what must be seen is whether the artistic, literary or social merit of the work outweighs its "obscene" content — Penal Code, 1860, Ss. 292 and 293 — Obscenity and art — Test to be applied in determining whether work in question is obscene or a work of art — Role of experts — Indecent Representation of Women (Prohibition) Act, 1986, Ss. 3, 4 and 6*

Where art and obscenity are mixed, what must be seen is whether the artistic, literary or social merit of the work in question outweighs its "obscene" content. (Para 66)

In *Ranjit D. Udeshi*, AIR 1965 SC 881, the Supreme Court held that the delicate task of deciding what is artistic and what is obscene has to be performed by courts and as a last resort by the Supreme Court and, therefore, the evidence of men of literature or others on the question of obscenity is not relevant. However, in *Samaresh Bose*, (1985) 4 SCC 289, it was observed that in appropriate cases, the court, for eliminating any subjective element or personal preference which may remain hidden in the subconscious mind and may unconsciously affect a proper objective assessment, may draw upon the evidence on record and also consider the views expressed by reputed or recognised authors of literature on such questions if there be any for its own consideration and satisfaction to enable the court to discharge the duty of making a proper assessment. (Para 69). *Ajay Goswami* v. *Union of India*, (2007) 1 SCC 143: (2007) 1 SCC (Cri) 298.

Bench Strength **2**. Coram: **Dr. Ar. Lakshmanan** and *Tarun Chatterjee*, JJ. [Date of decision: 12-12-2006]

[41] — Art. 19(2) — "Obscenity" — What is — *Held, nudity alone is not enough to make material legally obscene — Penal Code, 1860, Ss. 292 and 293 — Indecent Representation of Women (Prohibition) Act, 1986, Ss. 3, 4 and 6* (Paras 35 and 61). *Ajay*

Goswami v. *Union of India*, (2007) 1 SCC 143: (2007) 1 SCC (Cri) 298.

Bench Strength **2**. Coram: **Dr. Ar. Lakshmanan** and *Tarun Chatterjee*, JJ. [Date of decision: 12-12-2006]

ARTICLE 21

— Art. 21 *See* Arts. 14, 21, 31-B and Sch. IX, Item 10 *See also* Arts. 32, 226, 21 and 300

Synopsis

(a) Compensation
(b) Custodial death/violence
(c) Externment
(d) Fair and open trial
(e) Foreigners
(f) Right to freedom of conscience and expression
(g) Right to life
(h) Right to personal liberty
(i) Right to speedy trial

(a) Compensation

— Arts. 21, 32, 226 and 300 — Compensation and other remedial orders passed by Supreme Court for infringement of rights under Art. 21 *See* 'Article 21' — Custodial death/violence, Arts. 21, 32, 226 and 300, (2006) 3 SCC 178

(b) Custodial death/violence

[42] — Art. 21 — Custodial violence/torture — Third-degree methods — Use of, by police during interrogation — Reasons behind such practice — Tackling of custodial violence — Improvements to be made and measures to be taken for — *Held, lack of training in scientific investigation methods, lack of modern equipment and adequate police personnel and lack of a mindset respecting human rights are general reasons for the said illegal practice — Further, expectation of public (and men in power) regarding quick results from police builds enormous pressure on police leading them to resort to third-degree methods — Therefore, need is of attitudinal change not only in minds of police but also on the part of the public — Difficulties in criminal investigation and the time required for such investigation should be recognised — Police should be allowed to function methodically without interferences or unnecessary pressures — Duties of public, Govt. and men in power for better police performances, indicated — Custodial violence to be tackled by taking measures that are remedial and preventive — Award of compensation is one of the remedial measures — Preventive measures like reorientation of police training to bring change in mindset and attitude of police as regards human rights, adoption of scientific investigation methods and modern techniques of record maintenance, compliance with requirements enumerated in* D.K. Basu, *(1997) 1 SCC 416, continuous monitoring and supervision of lower level police officers, etc. commended — Emphasis laid on a balanced functioning where police respect human rights, adhere to law and take confidence-building measures and also firmly deal with serious crimes*

Unfortunately, police in the country have given room for an impression in the minds of public that whenever there is a crime investigation usually means rounding up all persons concerned (say all servants in the event of a theft in the employer's house, or all acquaintances of the deceased, in the event of a murder) and subjecting them to third-degree interrogation in the hope that someone will spill the beans. This impression may not be correct, but instances are not wanting where police have resorted to such a practice. Lack of training in scientific investigative methods, lack of modern equipment, lack of adequate personnel and lack of a mindset respecting human rights, are generally the reasons for such illegal action. One other main reason is that the public (and men in power) expect results from police in too short a span of time, forgetting that methodical and scientific investigation is a time-consuming and lengthy process. Police are branded as inefficient even when there is a short delay in catching the culprits in serious crimes. The expectation of quick results in high-profile or heinous crimes builds enormous pressure on the police to somehow "catch" the "offender". The need to have quick results tempts them to resort to third-degree methods. They also tend to arrest "someone" in a hurry on the basis of incomplete investigation, just to ease the pressure. Time has come for an attitudinal change not only in the minds of the police, but also on the part of the public. Difficulties in criminal investigation and the time required for such investigation should be recognised, and police should be allowed to function methodically without interferences or unnecessary pressures. If police are to perform better, the public should support them, Government should strengthen and equip them, and men in power should not interfere or belittle them. The three wings of the Government should encourage, insist and ensure thorough scientific investigation under proper legal procedures, followed by prompt and efficient prosecution. (Para 48)

Custodial violence requires to be tackled from two ends, that is, by taking measures that are remedial and preventive. Award of compensation is one of the remedial measures after the event. Effort should be made to remove the very causes which lead to custodial violence so as to prevent such occurrences. Following steps, if taken, may prove to be effective preventive measures:

(*a*) Police training should be reoriented, to bring in a change in the mindset and attitude of the police per-

sonnel in regard to investigations, so that they will recognise and respect human rights, and adopt thorough and scientific investigation methods.

(*b*) The functioning of lower level police officers should be continuously monitored and supervised by their superiors to prevent custodial violence and ensure adherence to lawful standard methods of investigation.

(*c*) Compliance with the eleven requirements enumerated in *D.K. Basu*, (1997) 1 SCC 416, should be ensured in all cases of arrest and detention.

(*d*) Simple and foolproof procedures should be introduced for prompt registration of first information reports relating to all crimes.

(*e*) Computerisation, video-recording and modern methods of records maintenance should be introduced to avoid manipulations, insertions, substitutions and antedating in regard to FIRs, mahazars, inquest proceedings, post-mortem reports and statements of witnesses, etc. and to bring in transparency in action.

(*f*) An independent investigating agency (preferably the respective Human Rights Commissions or CBI) may be entrusted with adequate power, to investigate complaints of custodial violence against police personnel and take stern and speedy action followed by prosecution, wherever necessary. (Para 49)

Thus, the endeavour should be to achieve a balanced level of functioning, where police respect human rights, adhere to law, and take confidence-building measures (CBMs), and at the same time, firmly deal with organised crime, terrorism, white-collared crime, deteriorating law and order situation, etc. (Para 49). *Sube Singh* v. *State of Haryana*, (2006) 3 SCC 178: (2006) 2 SCC (Cri) 54: AIR 2006 SC 1117: (2006) 102 Cut LT 19.

Bench Strength **3**. Coram: *Y.K. Sabharwal, C.J.* and *B.N. Srikrishna* and **R.V. Raveendran**, JJ. [Date of decision: 3-2-2006]

[43] — Arts. 21, 32, 226 and 300 — Custodial violence/death or illegal detention — Compensation against State — Awarding of — Power under Arts. 32/226 — *Held, courts may award compensation under Arts. 32/226 in cases where violation of Art. 21 involving custodial death/torture is established or is incontrovertible — But, may not award the same where there is no evidence of custodial torture except the statement of person aggrieved and where such allegation is not supported by any medical report or other corroborative evidence (including visible marks/scars), or where there are clear indications that the allegations are false or exaggerated, fully or in part — In such cases, the aggrieved party is to be relegated to traditional remedies available under civil/ criminal law — Questions to be considered before awarding compensation as public law remedy, indicated — Quantum of compensation would depend upon the facts and circumstances of each case — Award of such compensation will not affect the right to claim additional compensation by way of civil/criminal action — Degree of proof required in criminal prosecution relating to such matters, held, is not strict — Criminal Procedure Code, 1973, S. 357*

The question involved in this appeal was whether on the facts and circumstances of this case, compensation should be awarded to the petitioner and his family members as a public law remedy for the violation of their fundamental rights under Article 21 of the Constitution.

The petitioner wrote an undated letter to the Supreme Court alleging illegal detention, custodial torture and harassment to him and his family members by the police. The said letter was received by the Supreme Court on 19-11-1998 and was registered as a writ petition under Article 32 of the Constitution.

The letter (re: alleged torture and illegal detention)

In the letter the petitioner alleged that ASI *DS* (in charge of police post concerned), along with some police officers, came to his house on 10-3-1998 at about 11 a.m. to enquire about the whereabouts of his son *J*. When he informed them that he was not aware of it, they started beating him. Thereafter, the police took him, his wife and two minor daughters forcibly to the police post, through the bazaar. He was beaten with sticks on the way. At the police post, on direction of the Superintendent of Police (SP), *DS* took the petitioner inside and beat him for about 10 minutes and brought him back before the SP again. By then, his wife and daughters were made to sit in an uncomfortable posture (as students are made to sit in schools by way of punishment). When the petitioner stated that he was not aware of his son's whereabouts, the SP became furious and ordered his men to remove his moustache, whereupon *DS* sat on his chest (with three policemen pressing his hands and feet) and plucked his moustache. Again, they started beating the petitioner, searched his pockets and took away Rs 2350 which he was carrying. Then the police took him back to his house and ransacked the house. *DS* broke open the lock of his trunk and seized his licensed gun, some cartridges and arms licence, as also some jewellery found in the trunk. Thereafter, the petitioner was taken back to the police post. Though his wife and daughters were sent back to the house, he was illegally detained in police custody for a day and then taken to police station *GH* where he was kept for 10 days and during the first 5 days of such detention, he was regularly beaten. Because of such police harassment and tor-

ture, when he was released he and his younger son *G* fled from their house.

Subsequently, when on 8-7-1998 the petitioner returned to his house, he was handcuffed and taken to the police post concerned by the police officers and was tortured by them. When he requested for water, he was forced to drink hot water with salt. He was kept in a wooden shikanza for 5 days and was not allowed to sleep. Then he was taken to a place *J*. After three days he was again taken back to the aforesaid police post and kept there for 2 days. Thereafter, he was released with a condition to visit the police post everyday in the morning and evening.

The petitioner alleged that his friends and relatives who wanted to meet him, when he was being illegally detained, were not permitted to meet him and were also tortured. He also alleged that the police demanded money from him. In view of such torture he was forced to leave his house and remain outside. The petitioner prayed for a direction to the police to stop the atrocities and torture. He sought compensation for himself and his wife and daughters for the social, physical and financial loss, and return of his licensed gun, gold ornaments and other belongings. He also prayed for a thorough inquiry into the atrocities and torture committed by the police and imposition of punishment to those who were responsible.

The alleged second round of harassment

J, who was involved in several criminal cases, was arrested in June 1999, but he escaped from police custody on 25-1-2001. The petitioner filed an affidavit dated 22-2-2001 before the Supreme Court alleging interrogation by the police in regard to escape of *J*. He alleged that on 14-2-2001 he and his brother *N* were handcuffed and taken to the police station and interrogated and released on 15-2-2001. A further affidavit was filed by the petitioner on 1-10-2001 wherein he alleged that his younger son *G* was forcibly taken from his sister's house on 22-6-2001 and tortured.

The Supreme Court on not being satisfied with the enquiry report of the Inspector General of Police (Law and Order), directed CBI to inquire into the matter with reference to the allegations made in the letter as also the subsequent affidavits filed by the petitioner and his relatives and the reply-affidavits filed by the respondents. CBI held a preliminary inquiry and submitted the report. It concluded that some of the allegations of the petitioner were substantiated while several others were not substantiated. On the direction of the Supreme Court, an FIR was lodged against several police officers on 17-10-2002 under Sections 323, 342, 343, 365 and 384 IPC on the basis of the CBI report.

On behalf of the petitioner, a submission was made that in such cases, apart from the CBI inquiry and criminal prosecution, compensation has to be awarded to the victims. The State argued that having regard to the facts of the case and having regard to the registration of the FIR, the matter may have to await the result of the prosecution. The Supreme Court directed hearing on the limited question as to whether compensation should be awarded or not.

The Supreme Court found that the petitioner and his relatives made false and exaggerated claims in regard to illegal detention, torture, etc., apart from suppressing material facts. The fact of filing of writ petition before the High Court in the matter was not disclosed to the Supreme Court. There were many contradictions between the facts alleged before the Supreme Court and the High Court. Further, the CBI enquiry disclosed that the petitioner and his family members had not disowned *J*. They were regularly meeting *J* when he was in custody. This fact was contrary to what was asserted in the letter.

Disposing of the writ petition,

Held :

Compensation as public law remedy for violation of Art. 21

It is now well settled that the award of compensation against the State is an appropriate and effective remedy for redressal of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 CrPC. Award of compensation as a public law remedy for violation of the fundamental rights enshrined in Article 21 of the Constitution, in addition to the private law remedy under the law of torts, was evolved in the last two-and-a-half decades. (Paras 38 and 31)

Whether compensation should be awarded for every violation of Article 21

In cases where custodial death or custodial torture or other violation of the rights guaranteed under Article 21 is established, the courts may award compensation in a proceeding under Article 32 or 226. But, the cases where violation of Article 21 involving custodial death or torture is established or is incontrovertible stand on a different footing when compared to those cases where such violation is doubtful or not established. Where there is no inde-

pendent evidence of custodial torture and where there is neither medical evidence about any injury or disability, resulting from custodial torture, nor any mark/scar, it may not be prudent to accept claims of human rights violation, by persons having criminal records in a routine manner for awarding compensation. That may open the floodgates for false claims, either to mulct money from the State or as to prevent or thwart further investigation. The courts should, therefore, while zealously protecting the fundamental rights of those who are illegally detained or subjected to custodial violence, should also stand guard against false, motivated and frivolous claims in the interests of the society and to enable the police to discharge their duties fearlessly and effectively. While custodial torture is not infrequent, it should be borne in mind that every arrest and detention does not lead to custodial torture. (Paras 46 and 45)

Before awarding compensation, the Court will have to pose to itself the following questions: (*a*) whether the violation of Article 21 is patent and incontrovertible, (*b*) whether the violation is gross and of a magnitude to shock the conscience of the court, (*c*) whether the custodial torture alleged has resulted in death or whether custodial torture is supported by medical report or visible marks or scars or disability. Where there is no evidence of custodial torture of a person except his own statement, and where such allegation is not supported by any medical report or other corroborative evidence, or where there are clear indications that the allegations are false or exaggerated fully or in part, the courts may not award compensation as a public law remedy under Article 32 or 226, but relegate the aggrieved party to the traditional remedies by way of appropriate civil/criminal action. (Para 46)

However, the Supreme Court should not be understood as holding that harassment and custodial violence is not serious or worthy of consideration, where there is no medical report or visible marks or independent evidence. It is a fact that harassment or custodial violence cannot always be supported by a medical report or independent evidence or proved by marks or scars. Every illegal detention irrespective of its duration, and every custodial violence, irrespective of its degree or magnitude, is outright condemnable and per se actionable. Remedy for such violation is available in civil law and criminal law. The public law remedy is additionally available where the conditions mentioned above are satisfied. (Para 47)

The degree of proof required in criminal prosecution relating to such matters has been softened by earlier decisions of the Supreme Court. (Para 47)

In the present case, there was reasonable cause for the police to think that the family members of *J* might know about his whereabouts. The repeated questioning of the family members of *J* in the years 1998 and 2001, either at their houses or by calling them to the police station/post was part of the investigation process and cannot, per se, be considered as harassment or violation of Article 21. Whether the police exceeded their limits in questioning the petitioner or his relatives is of course a different aspect. (Para 29)

There is no clear or incontrovertible evidence about custodial torture, nor any medical report of any injury or disability. The grievance of the petitioner and his relatives is against different officers in different police stations at different points of time. More importantly, several of the allegations are proved to be exaggerated and false. Therefore, this is not a fit case for award of compensation. All reliefs which should be granted in such a case, have already been granted by ordering an inquiry by CBI and ensuring that the police officers named are prosecuted. The law will have to take its own course. However, this order will not come in the way of any civil court awarding compensation in an action in tort or the criminal court awarding compensation under Section 357 CrPC in the pending prosecution against any of the officers, if the charges are established. (Paras 50, 23 to 29 and 51). *Sube Singh* v. *State of Haryana*, (2006) 3 SCC 178: (2006) 2 SCC (Cri) 54: AIR 2006 SC 1117: (2006) 102 Cut LT 19.

Bench Strength **3**. Coram: *Y.K. Sabharwal*, *C.J.* and *B.N. Srikrishna* and **R.V. Raveendran**, JJ. [Date of decision: 3-2-2006]

(c) Externment

— **Art. 21** *See* POLICE — 'Delhi Police Act, 1978 (34 of 1978)', Ss. 47, 49 & 50, (2006) 5 SCC 228

(d) Fair and open trial

— **Arts. 21 and 14** *See* JURISPRUDENCE, (2006) 3 SCC 374

[44] — Arts. 21 and 14 — Fair hearing — Cardinality of, in protection of human rights — Inherence of fair hearing in "due process" and the rule of law

The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the courts of law. Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an

(d) Fair and open trial *(contd.)*

opportunity to preserve the process, it may be vitiated and violated by an over hasty stage-managed, tailored and partisan trial. (Paras 36 and 38). *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367: (2006) 2 KLT 350: 2006 Cri LJ 1694.

Bench Strength **2**. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 8-3-2006]

[**Ed.**: *See also* Shortnote G in *Zahira (1) case*, (2004) 4 SCC 158.]

[45] — Arts. 21 and 14 — Fair trial — Balancing of competing interests of the accused, the victim and society entailed — *A trial which is primarily aimed at ascertaining the truth has to be fair to all concerned — Interests of society not to be treated with complete disdain — In fact, public interest in proper administration of justice to be given as much importance, if not more, as interests of the individual accused — In this, courts have a vital role to play — Repeated emphasis by Supreme Court in this regard pointed out*

The concept of fair trial entails familiar triangulation of interests to the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interest of society is not to be treated completely with disdain and as persona non grata. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Public interest in the proper administration of justice must be given as much importance if not more, as the interest of the individual accused. In this courts have a vital role to play. Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to the society in general. (Paras 35, 36 and 42). *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367: (2006) 2 KLT 350: 2006 Cri LJ 1694.

Bench Strength **2**. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 8-3-2006]

[**Ed.**: *See also* Shortnotes I and J in *Zahira (1) case*, (2004) 4 SCC 158.]

[46] — Arts. 21 and 14 — Fair trial — What is — *Held, fair trial for a criminal offence consists not only in technical observance of frame and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice — Words and phrases — "Fair trial"*

There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial. (Para 36)

The fair trial for a criminal offence consists not only in technical observance of the frame, and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice. (Para 39). *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367: (2006) 2 KLT 350: 2006 Cri LJ 1694.

Bench Strength **2**. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 8-3-2006]

[**Ed.**: *See also* Shortnote H in *Zahira (1) case*, (2004) 4 SCC 158.]

(e) Foreigners

[47] — Arts. 21, 19(1)(e) & 73 — Deportation of an alien from India — Procedure for — Duty to inform reasons for — *Where the petitioner (an alien, though application for citizenship pending) entered India legally upon a single entry permit issued to him, held, the competent authority must inform him the reasons for his deportation — Petitioner to be given an opportunity to submit his representation against his proposed expulsion — It is thereafter that the competent authority may pass appropriate order after considering his representation — The said procedure may be departed from for compelling reasons of national security, etc. — In the instant case, there was no such compelling reasons — Hence, directions issued to communicate to the petitioner the reasons why he was sought to be deported — In case an adverse order is passed against the petitioner, he would be given seven days' time to seek appropriate legal remedy — International Covenant on Civil and Political Rights, 1966, Art. 13 — Citizenship,*

Migrants and Aliens — Foreigners Act, 1946, Ss. 3 & 11 — Passport (Entry into India) Act, 1920, S. 5

The petitioner filed the present writ petition challenging the order cancelling his residence visa permit. The petitioner also prayed for directions to the respondent to produce the papers relating to grant of Indian citizenship to him by naturalisation. He further prayed to quash and set aside the oral direction or order of deportation passed by the respondents and allow him to enter the Indian territory.

The case of the petitioner was that he was born in India to parents who were Iranian citizens. He was educated in India and thereafter intended to stay in India. He applied for grant of Indian passport on 15-7-2003 in response whereto he was required to comply with certain formalities. On the night intervening 7-10-2005/8-10-2005 the petitioner was deported to Tehran. He was never informed as to why such action was taken against him. He applied again to the Indian Embassy in Tehran to grant him entry visa enabling him to enter India so that he could settle his pending matters in this country. A single entry permit was issued to the petitioner by the Indian Embassy in Iran which was valid for the period from 8-11-2005 to 8-2-2006. On that basis, the petitioner re-entered this country.

The question that arose for consideration was whether the authorities intended to deport him again and if so, whether they were obliged to disclose to the petitioner the reasons for his proposed deportation.

Disposing of the writ petition, the Supreme Court decided as above. *Hasan Ali Raihany* v. *Union of India*, (2006) 3 SCC 705: (2006) 2 SCC (Cri) 33: AIR 2006 SC 1714: (2006) 128 DLT 759: 2006 Cri LJ 2106.

Bench Strength **2**. Coram: **B.P. Singh** and *Altamas Kabir*, JJ. [Date of decision: 9-3-2006]

Sarbananda Sonowal v. Union of India, (2005) 5 SCC 665, applied

(f) Right to freedom of conscience and expression

[48] — Arts. 21, 25, 19(1)(a), 32, 38, 51-A(e) and Preamble — Rights to life, freedom of conscience and expression — Scope — Right to marry person of one's choice — Inter-caste marriages — Validity and desirability of — *Issuance of writ of certiorari/mandamus to quash vexatious/malicious criminal proceedings (under Ss. 366 & 368 IPC) against family of petitioner's husband initiated by family of petitioner wife, latter family being vehemently opposed to her inter-caste marriage — CJM passing committal order against family of petitioner's husband in said proceedings, ignoring statement of petitioner recorded under S. 164 CrPC to the effect that she had married of her own free will, and final report of police in the matter which stated that neither was there any offence nor were the accused involved in any offence — Allegation that petitioner was not mentally fit, also dispelled by medical examination — Various instances of assault, humiliation, and irreparable harm to persons and property of family of petitioner's husband by brothers of petitioner, noted — Held, this case reveals a shocking state of affairs — Petitioner is a major and was at all times a major — Hence she is free to marry anyone she likes or live with anyone she likes — There is no bar to an inter-caste marriage under the Hindu Marriage Act or any other law — This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes — Hence no offence was committed by petitioner, her husband or her husband's relatives — Criminal proceedings in question, quashed — Conduct of police in proceeding against petitioner's husband's family, instead of against petitioner's brothers for their unlawful and high-handed acts, strongly deprecated — Criminal proceedings directed to be instituted against brothers of petitioner on basis of allegations contained in this petition — Role of caste in modern India, as a curse, and the beneficial role of inter-caste and/or inter-religious marriages, discussed — Further held, threats of violence or commission of violence or "honour" killings of persons who undergo inter-caste or inter-religious marriage of their own free will are wholly illegal and those who commit them must be severely punished — So-called "honour" killings are nothing but barbaric and shameful acts of murder committed by brutal, feudal-minded persons who deserve harsh punishment — Directions given to administration/police authorities throughout the country to see to it that such persons, who married of their free will and were majors, were not harassed by anyone nor subjected to threats or acts of violence, and that anyone who did so was proceeded against under law — Hindu Marriage Act, 1955, S. 5*

Allowing the writ petition,

Held :

The nation is passing through a crucial transitional period in our history, and the Supreme Court cannot remain silent in matters of great public concern, such as the present one. The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when We have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage are threat-

ened with violence, or violence is actually committed on them. Such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut-off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We sometimes hear of "honour" killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal-minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism. (Paras 16 to 18)

It is therefore directed that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major, undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple is not harassed by anyone nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law. (Para 17)

This case reveals a shocking state of affairs. There is no dispute that the petitioner is a major and was at all relevant times a major. Hence she is free to marry anyone she likes or live with anyone she likes. There is no bar to an inter-caste marriage under the Hindu Marriage Act or any other law. Hence it cannot be seen what offence was committed by the petitioner, her husband or her husband's relatives. No offence was committed by any of the accused and the whole criminal case in question is an abuse of the process of the court as well as of the administrative machinery at the instance of the petitioner's brothers who were only furious because the petitioner married outside her caste. It is distressing to note that instead of taking action against the petitioner's brothers for their unlawful and high-handed acts (details of which have been set out), the police has instead proceeded against the petitioner's husband and his relatives. (Paras 14 and 15)

In the circumstances, the writ petition filed under Article 32 is allowed. The proceedings pending against the petitioner's family are quashed. The warrants against the accused are also quashed. The police at all the places concerned should ensure that neither the petitioner nor her husband nor any relatives of the petitioner's husband are harassed or threatened nor any acts of violence are committed against them. If anybody is found doing so, he should be proceeded against sternly in accordance with law, by the authorities concerned. (Para 19)

It is further directed that in view of the allegations in the petition, criminal proceedings shall be instituted forthwith by the authorities concerned against the petitioner's brothers and others involved, in accordance with law. (Para 20). *Lata Singh* v. *State of U.P.*, (2006) 5 SCC 475: (2006) 2 SCC (Cri) 478: AIR 2006 SC 2522: 2006 Cri LJ 3309: (2006) 3 KLT 375.

Bench Strength **2**. Coram: *Ashok Bhan* and **Markandey Katju**, JJ. [Date of decision: 7-7-2006]

(g) Right to life

— Art. 21 — Rape violates the victims right under Art. 21 *See* PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Generally, S. 376, (2006) 3 SCC 771

— Art. 21 — Unjust conviction *See* EVIDENCE ACT, 1872, S. 35, (2006) 5 SCC 584

[49] — Art. 21 — Right to life — Scope of — Reiterated that it embraces within its sweep not only physical existence but the quality of life — If any statutory provision runs counter to such a right, it must be held unconstitutional and *ultra vires* Part III of the Constitution (Para 61). *Confederation of Ex-Servicemen Assns.* v. *Union of India*, (2006) 8 SCC 399: 2006 SCC (L&S) 2002: AIR 2006 SC 2945.

Bench Strength **5**. Coram: *Y.K. Sabharwal, C.J.* and *K.G. Balakrishnan, S.H. Kapadia*, **C.K. Thakker** and *P.K. Balasubramanyan*, JJ. [Date of decision: 22-8-2006]

[50] — Arts. 21, 14 and 15 — Duty of States to protect life and liberty of its citizens — *Held, there cannot be any deviation in discharge of such duty because of any extraneous factors like caste, creed, religion, political belief or ideology — Rule of law*

Every State has a constitutional obligation and duty to protect the life and liberty of its citizens. That is the fundamental requirement for observance of the rule of law. There cannot be any deviation from this requirement because of any extraneous factors like caste, creed, religion, political belief or ideology. Every State is supposed to know these fundamental requirements. (Para 41). *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367: (2006) 2 KLT 350: 2006 Cri LJ 1694.

Bench Strength **2**. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 8-3-2006]

(h) Right to personal liberty

[51] — Arts. 21, 105 and 194 — Right to personal liberty — Scope of — Bail to (MP) undertrials/accused after long period of incarceration (six years) — Balancing of right to personal liberty versus interests of society — Factors to be considered — Nature of offence — *Conduct of accused in prison, and when on bail when granted on earlier occasions — Membership of Parliament by accused on four occasions — Stage of investigation, trial reached at the point when bail sought — Held, there is no absolute rule that a long period of incarceration by itself would entitle an undertrial to bail — It would be wholly inappropriate to grant bail when the investigation and trial are nearly over, and allegations against the accused are serious — Further, conduct of appellant-accused was such that he did not deserve bail — He had deliberately used dilatory tactics for delaying the trial — Lastly, it is irrelevant that appellant has been MP four times — The law is no respecter of persons, and is the same for everyone — Day-to-day conduct of trial directed for expeditious conclusion thereof — However, directed that no court was to entertain any further bail application by appellant-accused — Criminal Procedure Code, 1973, Ss. 437 and 439 — Rule of Law*

This appeal under Article 136 of the Constitution was filed against the impugned judgment and order dated 27-4-2006 of the High Court by which the appellant's application for bail was dismissed. The appellant's bail application had been rejected earlier on several occasions by the High Court as well as by the Supreme Court. The last order of the Supreme Court dated 3-10-2005 inter alia requested the Sessions Judge to expedite the trial. If the trial was not completed within a period of six months from that order, it was left open to the appellant to renew the bail application. At the time of hearing of this appeal all the prosecution witnesses had been examined and cross-examined, and only the defence witnesses remained to be examined.

The appellant submitted that 60/70 defence witnesses were proposed to be examined and some more defence witnesses on behalf of the other accused were to be examined. Hence, he submitted that it would take a long time to examine these witnesses. That he had been in jail for more than six years and hence he should be released on bail. That if ultimately he was found innocent by the trial court, he would have undergone a long period of incarceration in jail which would be violative of Article 21 of the Constitution.

The State submitted that the appellant himself was at least partly responsible for the delay in the conclusion of the trial because most of the prosecution witnesses were cross-examined by his counsel for several days, mostly by asking irrelevant questions, and these were deliberate dilatory tactics used for delaying the trial so that on that basis the appellant could pray for bail.

Dismissing the appeal,

Held :

None of the decisions cited by the appellant can be said to have laid down any absolute and unconditional rule about when bail should be granted by the court and when it should not. It all depends on the facts and circumstances of each case and it cannot be said that there is any absolute rule that the mere fact that the undertrial/accused has undergone a long period of incarceration by itself would entitle him to be enlarged on bail. (Paras 10 and 12)

While it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the court has also to take into consideration other facts and circumstances, such as the interest of the society. (Para 16)

It has been stated that the appellant has been a Member of Parliament on four occasions. This is wholly irrelevant. The law is no respecter of persons, and is the same for everyone. (Para 17)

A perusal of the FIR itself shows that it is a triple murder case, and the incident was committed in broad daylight with sophisticated weapons. It is true that the appellant was not named in the FIR, but it has come in the statement before the Magistrate under Section 164 CrPC of one Ranjan Tiwari that he and other assailants had been hired by the appellant to commit this ghastly crime. Though no comment is sought to be made on the veracity or otherwise of the statement of Ranjan Tiwari and other witnesses, as it may influence the trial, but looking at the allegations against the appellant, both in the statement of Ranjan Tiwari and other witnesses, on the facts and circumstances of the case, it is clear that this is certainly not a case for grant of bail to the appellant, particularly, since the prosecution witnesses have been examined and now the defence witnesses alone have to be examined. It would be wholly inappropriate to grant bail when not only the investigation is over but even the trial is partly over, and the allegations against the appellant are serious. (Paras 18 and 19)

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The appellant's conduct as recorded in *Kalyan Chandra Sarkar case*, (2005) 3 SCC 284, [set out in para 13 herein] has been such that he does not deserve bail and the Supreme Court as of now is not inclined to exercise its discretion under Article 136 for granting bail to the appellant. (Paras 13 and 20)

It is made clear that no further application for bail will be considered in this case by any court, as already a large number of bail applications have been rejected earlier, both by the High Court and the Supreme Court. It is directed that the trial court shall ensure that the defence witnesses are examined on a day-to-day basis in accordance with a fixed time schedule so that the trial is completed as expeditiously as possible and the judgment is delivered soon thereafter. (Paras 24 and 25). *Rajesh Ranjan Yadav* v. *CBI*, (2007) 1 SCC 70: (2007) 1 SCC (Cri) 254.

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 16-11-2006]

Babu Singh v. State of U.P., (1978) 1 SCC 579: 1978 SCC (Cri) 133; Kashmira Singh v. State of Punjab, (1977) 4 SCC 291: 1977 SCC (Cri) 559; Bhagirathsinh v. State of Gujarat, (1984) 1 SCC 284: 1984 SCC (Cri) 63; Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616: 1996 SCC (Cri) 366; Joginder Kumar v. State of U.P., (1994) 4 SCC 260: 1994 SCC (Cri) 1172, clarified

(i) Right to speedy trial

[52] — Art. 21 — A facet of Art. 21 — Object — *It commences with the actual restraint imposed by arrest and incarceration and continues at all the stages viz. investigation, inquiry, trial, appeal and revision — No general guideline as regards what would amount to violation of this right can be laid down and it would depend upon facts of each case — Prosecution and court have a duty to prevent unreasonable delay in conclusion of trial — Central Govt., State Govt. and all the authorities concerned should take immediate steps to make this right effective*

The speedy trial is implicit in the spectrum of Article 21 of the Constitution. Speedy trial is one of the facets of the fundamental right to life and liberty enshrined in Article 21 and the law must ensure "reasonable, just and fair" procedure which has a creative connotation. (Paras 22 and 48)

The purpose of right to a speedy trial is intended to avoid oppression and prevent delay by imposing on the courts and on the prosecution an obligation to proceed with reasonable dispatch. (Para 51)

The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. (Para 46)

The constitutional guarantee is for the protection of both the accused and the society. Even in the United States where there has been a constitutional amendment recognising speedy trial as an extremely valuable right of the accused even then the Court has held that no time-limit could be fixed for concluding the criminal trial. It has been held that it depends on the facts and circumstances of each case. It becomes abundantly clear that no general guideline can be fixed by the court and that each case has to be examined on its own facts and circumstances. (Paras 35 and 49)

It is the bounden duty of the court and the prosecution to prevent unreasonable delay. In order to make the administration of criminal justice effective, vibrant and meaningful, the Union of India, the State Governments and all authorities concerned must take necessary steps immediately so that the important constitutional right of the accused of a speedy trial does not remain only on papers or is a mere formality. (Paras 50 and 52). *Moti Lal Saraf* v. *State of J&K*, (2006) 10 SCC 560: (2007) 1 SCC (Cri) 180: 2006 Cri LJ 4765.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

[**Ed.**: Should not abuse of process of law invite censure of those responsible and award of compensation to the aggrieved?]

[53] — Arts. 21, 226 and 136 — Protracted criminal proceedings — Quashing of — *Three challans filed against appellant Manager, State Bank of India on same cause of action and same facts and circumstances under S. 5(2) of Prevention of Corruption Act — High Court quashed the first proceeding pending before trial court on ground of absence of valid sanction for prosecution — Second challan filed despite knowing about quashing of the first one, also quashed by Special Court on the same ground and its order, in absence of challenge, became final and binding between the parties — All the same, a third challan filed against appellant on the same set of facts by virtue of which appellant came under judicial restraint and was asked to produce sureties for his presence in court — Writ petition filed by appellant before High Court thereagainst dismissed without appreciating the contentions of the parties in proper perspective — In last more than 26 years not even a single witness examined by prosecution — Held, proceedings taken against appellant amounted to abuse of process of court in violation of appellant's right to speedy trial, hence quashed*

It was submitted that the appellant could not have been prosecuted without a valid sanction. The respon-

dents were not justified in filing the fresh challan without getting the earlier order of the High Court and the order of the Special Judge, quashed. It was urged that the proceedings initiated against the appellant were totally without jurisdiction and consequently were liable to be set aside. The appellant also sought relief on the ground that it was the right of every citizen to seek speedy trial. Continuation of further proceedings against the appellant is contrary to the basic spirit of Article 21 of the Constitution, and consequently, the impugned judgment is liable to be set aside.

Allowing the appeal,

Held :

In this case, the basic facts incorporated in the special leave petition regarding the three challans produced by the respondents have not been denied. Not a single witness has been examined by the prosecution in the last twenty-six years without there being any lapse on behalf of the appellant. The appellant, of course, had taken the legal remedy available to him to protect his interests against illegal proceedings initiated against him by the respondents, but that by itself could not be a ground to harass and humiliate the appellant for more than a quarter century. The appellant has been facing the criminal prosecution for almost more than two-and-a-half decades. Permitting the State to continue with the prosecution and trial any further would be total abuse of the process of law. Consequently, the criminal proceedings are quashed. (Paras 19, 53 and 21)

The speedy trial is implicit in the spectrum of Article 21 of the Constitution. Speedy trial is one of the facets of the fundamental right to life and liberty enshrined in Article 21 and the law must ensure "reasonable, just and fair" procedure which has a creative connotation. (Paras 22 and 48)

The purpose of right to a speedy trial is intended to avoid oppression and prevent delay by imposing on the courts and on the prosecution an obligation to proceed with reasonable dispatch. (Para 51)

The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. (Para 46)

The constitutional guarantee is for the protection of both the accused and the society. Even in the United States where there has been a constitutional amendment recognising speedy trial as an extremely valuable right of the accused even then the Court has held that no time-limit could be fixed for concluding the criminal trial. It has been held that it depends on the facts and circumstances of each case. It becomes abundantly clear that no general guideline can be fixed by the court and that each case has to be examined on its own facts and circumstances. (Paras 35 and 49)

It is the bounden duty of the court and the prosecution to prevent unreasonable delay. In order to make the administration of criminal justice effective, vibrant and meaningful, the Union of India, the State Governments and all authorities concerned must take necessary steps immediately so that the important constitutional right of the accused of a speedy trial does not remain only on papers or is a mere formality. (Paras 50 and 52). *Moti Lal Saraf* v. *State of J&K*, (2006) 10 SCC 560: (2007) 1 SCC (Cri) 180: 2006 Cri LJ 4765.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

ARTICLE 22

See also PREVENTIVE DETENTION

Synopsis

Article 22(5)

(1) Detention order

(2) Representation to appropriate authority/Govt.

(3) Particular statutes

Article 22(5)

— Art. 22(5) *See* Arts. 136 and 22(5)

(1) Detention order

— Art. 22 *See* PREVENTIVE DETENTION — 'Detention order' — Detenu already in jail or custody, (2006) 7 SCC 603

(2) Representation to appropriate authority/Govt.

See also PREVENTIVE DETENTION — 'Communication of grounds of detention' — Documents and materials which need not be supplied, (2006) 5 SCC 676, 'Detention order' — Subjective satisfaction of detaining authority, (2006) 5 SCC 676, 'Representation to appropriate authority/Govt.' — Delay in disposal of representation, (2006) 5 SCC 676, Non-consideration of representation, (2006) 7 SCC 603, Delay in consideration of representation, (2007) 1 SCC 295

— Art. 22(5) — Representation — Obligation of Central Govt. to consider, even if rejected by Advisory Board and detaining authority *See* PREVENTIVE DETENTION — 'Representation to appropriate authority/Govt.' — Consideration of representation by appropriate authority independent of reference to Advisory Board, (2007) 1 SCC 295

(3) Particular statutes

— Art. 22 *See also* PREVENTIVE DETENTION — 'Advisory Board' — Reference to the Board, (2006) 5 SCC 142,

Article 22(5) - Particular statutes *(contd.)*

'Detention order' — Bar to passing of detention order, (2006) 5 SCC 142, Delay in passing detention order, (2006) 5 SCC 142, Non-placement of relevant material before detaining authority, (2006) 5 SCC 142, 'Evaluation of grounds of detention' — Consequence of defect in grounds: vagueness, non-existence, illegality or irrelevancy, (2006) 5 SCC 142, Non-placement of relevant material before detaining authority, (2006) 5 SCC 142, 'Representation to appropriate authority/Govt.' — Delay in disposal of representation, (2006) 5 SCC 142

— **Arts. 22 and 21** *See* PREVENTIVE DETENTION — 'Detention order' — Delay in passing detention order, (2006) 4 SCC 796, Non-placement of relevant material before detaining authority, (2006) 4 SCC 792, (2006) 4 SCC 796, Pre-execution challenge to detention order, (2006) 4 SCC 796

— **Art. 22(5)** *See also* PREVENTIVE DETENTION — 'Communication of grounds of detention' — Language of communication, (2006) 7 SCC 560

— **Art. 25** *See* Arts. 21, 25, 19(1)(a), 32, 38, 51-A(e) and Preamble

— **Art. 31-B** *See* Arts. 14, 21, 31-B and Sch. IX, Item 10

See also Sch. IX, Item 100 & Art. 31-B

ARTICLE 32

— **Art. 32** *See* Arts. 21, 25, 19(1)(a), 32, 38, 51-A(e) and Preamble

See also Arts. 21, 32, 226 and 300

See also Arts. 136 and 32

See also Arts. 213(1), 123(1), 32 and 226

See also Arts. 226 and 32

Synopsis

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(a) Nature and Scope

Content of rights

[54] — Arts. 32, 226 & 136 and 245, 246 & 368 — Content of rights — Authority that provides — Role of Judiciary — Preservation and protection of Constitution and in law-making — Safeguards on judicial power — *Held, content of a right is defined by courts — Final word on content of a right is of Supreme Court — Parliament while enacting a law does not provide content to a right — The content is provided by judgments of Supreme Court — Therefore constitutional adjudication plays a very important role in this exercise — Language of the text is not necessarily a controlling factor — The Constitution works because of its generalities, and because of the good sense of the judges when interpreting it — It is that informed freedom of action of the judges that helps to preserve and protect the Constitution — Jurisprudence. M. Nagaraj* v. *Union of India*, (2006) 8 SCC 212.

Bench Strength **5**. Coram: *Y.K. Sabharwal, C.J.* and *K.G. Balakrishnan*, **S.H. Kapadia**, *C.K. Thakker* and *P.K. Balasubramanyan*, JJ. [Date of decision: 19-10-2006]

Reliance Petrochemicals Ltd. v. Indian Express Newspapers, Bombay (P) Ltd., (1988) 4 SCC 592; Dinesh Trivedi v. Union of India, (1997) 4 SCC 306; Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294; People's Union for Civil Liberties v. Union of India, (2003) 4 SCC 399, impliedly affirmed

(b) Maintainability

(1) Alternative remedy/Exhaustion of remedies

— **Arts. 32 and 226 — Exhaustion of alternative remedies** *See* 'Article 32' — Scope of Interference — Direct recourse to Supreme Court, Arts. 32 and 226, (2005) 13 SCC 458

(2) Res judicata

[55] — Arts. 32, 136 and 137 — Appeal dismissed under Art. 136 — Review petition on ground that not all questions raised by petitioners were considered in said dismissed appeal under Art. 136, also dismissed under Art. 137 for delay — *Writ petition therefore filed under Art. 32 — Maintainability — Held, not maintainable. Sunitha Rathore* v. *Union of India*, (2005) 13 SCC 264.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 9-8-2004]

[**Ed.**: *See also* (2004) 8 SCC 106, Shortnote B. *See also* Art. 32, "(*c*)(22)(*iii*) Finality — Writ petitions against final judgments/orders — Arts. 32 and 137; Arts. 32 and 136", pp. 503 et seq., Vol. 7, *Complete Digest of Supreme Court Cases*, 2nd Edn.]

(3) Standing/Locus standi

— Art. 32 — Criminal matters — Standing to question conduct of criminal proceedings — Fodder Scam cases *See* 'Article 32' — Public Interest Litigation/PIL, Art. 32, (2006) 6 SCC 613

(c) Exercise of power

(1) Issue of directions, guidelines and orders

— Arts. 32, 142 and 144 — Executive or Legislative action/inaction or gaps — Order/directions redressing or filling up of *See* POLICE — 'Generally', (2006) 8 SCC 1

(2) Power of judicial review

[56] — Arts. 32, 226 and 136 — Judicial review — Scope of — Constitutional or statutory functionaries — Vires of acts of — Authority to decide — *Held (per Pasayat, J.), it is for court to decide if acts of such functionaries fall within the ambit of constitutional or legislative conferment of power, or are vitiated by self-denial on erroneous appreciation of the full amplitude of the power — Held (per Kapadia, J.), every prerogative has to be subject to the rule of law — Principle of exclusive cognizance would not apply when and if the decision impugned is in derogation of a constitutional provision or the rule of law*

Per Pasayat, J.

The function of determining whether the act of a constitutional or statutory functionary falls within the constitutional or legislative conferment of power, or is vitiated by self-denial on an erroneous appreciation of the full amplitude of the power, is a matter for the court. (Para 25)

The principle of exclusive cognizance would not apply when and if the decision impugned is in derogation of a constitutional provision. (Para 65)

The rule of law is the basis for evaluation of all decisions. The supreme quality of the rule of law is fairness and legal certainty. The principle of legality occupies a central plan in the rule of law. Every prerogative has to be subject to the rule of law. That rule cannot be compromised on the grounds of political expediency. To go by such considerations would be subversive of the fundamental principles of the rule of law and it would amount to setting a dangerous precedent. The rule of law principle comprises a requirement of "Government according to law". The ethos of "Government according to law" requires the prerogative to be exercised in a manner which is consistent with the basic principle of fairness and certainty. (Para 66)

The constitutional justification for judicial review, and the vindication of the rule of law remain constant in all areas, but the mechanism for giving effect to that justification varies. (Para 68)

There is a clear symmetry between the constitutional rationale for review of statutory and prerogative power. In each case, the courts have to ensure that the authority is used in a manner which is consistent with the rule of law, which is the fundamental principle of good administration. In each case, the rule of law should be the overarching constitutional justification for judicial review. The exercise of prerogative power cannot be placed in straitjacket formula and the perceptions regarding the extent and amplitude of this power are bound to vary. However, when the impugned decision does not indicate any data or manageable standards, the decision amounts to derogation of an important constitutional principle of rule of law. (Para 69)

The controlling factor in determining whether the exercise of prerogative power is subject to judicial review is not its source but its subject-matter. It can no longer be said that prerogative power is *ipso facto* immune from judicial review. (Para 66). *Epuru Sudhakar* v. *Govt. of A.P.*, (2006) 8 SCC 161: (2006) 3 SCC (Cri) 438: AIR 2006 SC 3385.

Bench Strength **2**. Coram: **Arijit Pasayat**[1] and **S.H. Kapadia**[2], JJ. [Date of decision: 11-10-2006]

(3) Preservation of rule of law

[57] — Arts. 32, 136, 142, 144 and Preamble — Rule of law — Preservation of — Importance of — Law enforcement — Need for, when violations of laws are so extensive that it seems a physical impossibility to remedy the situation — Enforcement of law at such stage likely to lead to large-scale dislocation — Effect — Judiciary, role of — *Held, rule of law is the essence of democracy — It has to be preserved — Laws have to be enforced — In the present case, the enforcement of (building and land use) laws and orders of courts for their implementation is utterly lacking — In fact simultaneously, more and more violations were taking place — If the laws are not enforced and orders of courts to enforce and implement the laws are ignored, the result can only be total lawlessness — Supreme Court cannot remain a mute spectator when the violations of (building and land use) laws affect the environment and healthy living of law-abiders — The enormity of the problem of rampant and large-scale violation of such laws, which, to a great extent, is the doing of the authorities themselves, does not mean that a beginning should not be made to set things right — If the entire misuser of premises and violations cannot be stopped at one point of time because of its extensive nature, then it has to be stopped in a phased manner, beginning with major violators — There has to be a will to do it — Contention of MCD that it is physical impossibility to remove the misuser deserves outright*

rejection — It is not merely a case of only lack of will to take action, but appears to be a case of predominance of extraneous considerations. M.C. Mehta v. *Union of India*, (2006) 3 SCC 399: AIR 2006 SC 1325: (2006) 127 DLT 226.

Bench Strength **3**. Coram: **Y.K. Sabharwal, C.J.** and *B.N. Srikrishna* and *R.V. Raveendran*, JJ. [Date of decision: 16-2-2006]

Ahuja Property Developers (P) Ltd. v. MCD, (1990) 42 DLT 474; DDA v. Rajinder Mittal, (1991) 20 DRJ 65; ANZ Grindlays Bank v. Commr., MCD, (1995) 34 DRJ 492; Anil Kumar Khurana v. MCD, (1996) 36 DRJ 558, approved

(d) Scope of interference

(1) Generally

[58] — Art. 32 — Scope of interference under — Decisions which may be erroneous but not illegal, held, would not be interfered with under Art. 32 (Paras 58 and 61). *M.P. SEB* v. *Union of India*, (2006) 10 SCC 736.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 13-9-2006]

J. Fernandes & Co. v. Dy. Chief Controller of Imports & Exports, (1975) 1 SCC 716; Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India, (1981) 1 SCC 568, followed

(2) Direct recourse to Supreme Court

[59] — Arts. 32 and 226 — Interference in criminal matters — Investigation into kidnapping case — Direct recourse to Supreme Court — Availability *— Writ petition raising grievances as to independence of investigating officer and pace of investigation — Held, proper course is to approach High Court first — In any case, materials on record, only a letter from a Member of Parliament, were insufficient to entertain the said letter as a writ petition. Kidnapping of Mahendra Prasad Gupta, In re*, (2005) 13 SCC 458: (2006) 2 SCC (Cri) 266.

Bench Strength **3**. Coram: *Y.K. Sabharwal, Dr. Ar. Lakshmanan* and *C.K. Thakker*, JJ. [Date of decision: 5-9-2005]

(3) Enforcement of fundamental rights

[60] — Art. 32 — Matter involving freedom of conscience and expression in terms of right to marry person of one's choice outside one's caste — Entertained and relief given (Paras 16 to 20). *Lata Singh* v. *State of U.P.*, (2006) 5 SCC 475: (2006) 2 SCC (Cri) 478: AIR 2006 SC 2522: 2006 Cri LJ 3309: (2006) 3 KLT 375.

Bench Strength **2**. Coram: *Ashok Bhan* and **Markandey Katju**, JJ. [Date of decision: 7-7-2006]

(4) Interference in appointment of judges for special trials

[61] — Arts. 32, 233 and 235 — Fodder Scam cases — Conduct of trial — Appointment of Judge in — *Trial stayed, and certain documents/information called for from Registrar General of High Court. Rajiv Ranjan Singh 'Lalan' (V-A)* v. *Union of India*, (2006) 6 SCC 662: (2006) 3 SCC (Cri) 174.

Bench Strength **3**. Coram: *S.N. Variava, Dr. Ar. Lakshmanan* and *S.H. Kapadia*, JJ. [Date of decision: 1-8-2005]

(5) Interference in criminal matters

CBI Enquiry

[62] — Art. 32 — Criminal matters — CBI enquiry *— Writ petition seeking Court's direction to conduct enquiry by CBI into murder of petitioner's son, no action having been taken by police on FIR lodged by him — Held, cannot be entertained in view of relevant provisions of CrPC — Criminal Procedure Code, 1973, Ss. 154, 156, 190, 200 and 203*

When the information is laid with the police, but no action in that behalf is taken, the complainant can under Section 190 read with Section 200 of the Code lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into the offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. A writ petition in such cases is not to be entertained. It is the case of the petitioner that he is under constant threat by some persons and his life and property are in danger. If he seeks any protection, it is the duty of the police officials concerned to provide such security as is warranted in the circumstances in accordance with law. (Paras 4 to 6). *Hari Singh* v. *State of U.P.*, (2006) 5 SCC 733: (2006) 3 SCC (Cri) 63: AIR 2006 SC 2464: (2006) 130 DLT 591: (2006) 3 KLT 269: 2006 Cri LJ 3283.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 16-6-2006]

(6) Interference in prevention of corruption matters

— Art. 32 — Supreme Court monitored CBI cases

See PUBLIC ACCOUNTABILITY AND VIGILANCE — 'Vigilance Authorities' — CBI, (2007) 1 SCC 110

[63] — Art. 32 — Supreme Court monitored CBI cases — Concern of Supreme Court — Merits of case against accused — Relevance — *Held (per curiam), concern of Supreme Court in such cases is with ensuring proper and honest performance of its duty by CBI and it is not concerned with merit of accusations in the investigation*

In Supreme Court monitored CBI cases, the Supreme Court is concerned with ensuring proper and honest performance of its duty by CBI and that the Supreme Court is not concerned with the merits of the accusations in the investigation, which are to be determined at the trial on the filing of the charge-sheet in the competent court, according to the ordinary procedure prescribed by law. (Para 30). *M.C. Mehta (Taj Corridor Scam)* v. *Union of India*, (2007) 1 SCC 110: (2007) 1 SCC (Cri) 264.

Bench Strength **3**. Coram: **S.B. Sinha**[2], **S.H. Kapadia**[1] and *D.K. Jain*[1], JJ. [Date of decision: 27-11-2006]

(e) Practice and Procedure

Pleadings/New Plea/Additional Plea/Alternative Plea

— Art. 32 — New plea *See* PREVENTIVE DETENTION — 'Representation to Appropriate Authority/Govt.' — Delay in disposal of representation, (2006) 7 SCC 560

[64] — Art. 32 — Oral pleadings — Oral pleadings/misc. petition filed claiming additional relief — Maintainability — *Need to amend original writ petition (per Balakrishnan, J.)*

The appointment of Shri Munni Lal Paswan as Special Judge is not challenged by the petitioners and no pleadings also made in the main writ petition. By filing a criminal miscellaneous application, and on the basis of oral arguments at the Bar the petitioners have made a series of allegations which are not borne out by any records. (Para 17)

There is no material on record to show that there was any illegality or serious infraction of any procedure in the appointment of the present CBI (Special Judge), Patna and the appointment as such cannot be challenged in a collateral proceedings and the Supreme Court cannot go into the question of appointment of a Special Judge which is exclusively within the domain of the High Court under Article 235 of the Constitution; the appointment in question having been validly made by High Court in this case. Therefore, the oral appeal of the petitioners that the present Special Judge is to be replaced by another judicial officer also cannot therefore be granted. If at all the petitioners had any grievance regarding the appointment of any particular officer, the proper remedy was to approach the High Court and to bring this fact to the notice of the Chief Justice. (Paras 17 and 26). *Rajiv Ranjan Singh 'Lalan' (VIII)* v. *Union of India*, (2006) 6 SCC 613: (2006) 3 SCC (Cri) 125.

Bench Strength **3**. Coram: **K.G. Balakrishnan**[1], **Dr. Ar. Lakshmanan**[2] and **S.H. Kapadia**[3], JJ. [Date of decision: 21-8-2006]

— Arts. 32 and 226 — Pleadings and particulars — Sufficiency of materials on record *See* 'Article 32' — Scope of Interference — Direct recourse to Supreme Court, Arts. 32 and 226, (2005) 13 SCC 458

(f) Particular Writs

Habeas corpus

— Arts. 32 and 226 — Habeas Corpus — Whom available against *See* 'Article 32' — Particular writs — Habeas corpus, Arts. 32 and 226, (2006) 9 SCC 364

[65] — Arts. 32 and 226 — Writs — Habeas corpus — Particular instances — Wrongful custody of child (by close relatives) — Issue of habeas corpus against persons having custody of child — *Respondent in-laws of petitioner widow found to have custody of her minor child — DNA test ordered by Supreme Court proving that child produced in Court by respondents was not the child of petitioner — Direction in nature of habeas corpus issued against respondents to produce the real minor child of petitioner in Supreme Court, enabling petitioner to have custody, being the natural mother — Costs of Rs 10,000 awarded against respondents — Further, due to several deliberate falsifications, misrepresentations and filing of false affidavits and passports by respondents before the Supreme Court so as to avoid having to produce passport of the said minor child, respondents found guilty of contempt of court — Hindu Minority and Guardianship Act, 1956, Ss. 6 and 5 — Guardians and Wards Act, 1890, S. 9*

Allowing the writ petition and contempt petition,

Held :

It is clear that the minor child of the petitioner is in the custody of Respondents 2-5. It is also proved by the DNA test that the child produced before the Court is not the child of the petitioner. Therefore, the respondents are bound to produce the real child of the petitioner before the Supreme Court. Therefore a direction in the nature of habeas corpus is issued directing Respondents 2-5 to produce baby Simran Batra, daughter of the petitioner in body in the Supreme Court enabling the petitioner to have the custody being the natural mother. Prayer (*a*) of the writ petition is ordered accordingly with costs assessed at Rs 10,000. (Para 21)

While the direction was issued by the Supreme Court to produce the passport, the counsel made a statement at the next hearing that the passport had been lost. When the Court directed the respondents to place on record the details of the passport, etc. by an affidavit, the respondents filed an affidavit expressing deep regret about the grave mistake and produced the passport in the Court. Thus it is seen that the earlier stand taken by the respondents that the original passport has been lost and the FIR has been registered to that effect stands falsified with the production of these passports and by the subsequent affidavit dated 9-2-2005. On 14-3-2005, the respondents have also filed an affidavit tendering their unqualified apology for this grievous mistake that has occurred. The similar affidavits filed by the other respondents have been perused. The affidavits are not genuine and bona fide. The respondents have come to the Supreme Court with unclean hands and with a false case. A perusal of the entire proceedings in the Supreme Court and the proceedings pending before the other courts would only go to show that the respondents' evil desire to grab the property and to make the life of the petitioner, a widow with a girl child, miserable. The result of the DNA test is now crystal clear that the child produced before the Supreme Court is not the real child of the petitioner and that the petitioner's real child Simran Batra is in the custody of Respondents 2-5 elsewhere. Several deliberate attempts made by the respondents were falsified by their own conduct in filing affidavits and also the production of the passports in the Supreme Court. Therefore it is held that Respondents 2-5 are guilty of contempt of the Supreme Court and, therefore, they are liable for punishment for their proved misconduct. They have committed the contempt knowingly and that it is attributable to the neglect on their part. Respondents 3 and 5 have not so far appeared before the Supreme Court under one pretext or the other. Respondents 2-5 are liable to punishment for their proved disobedience of the order a fine of Rs 2000 each is imposed on the contemnors to be deposited within three days from this day in this Registry, failing which the respondents shall be punished with simple imprisonment for a period of one month each. (Para 23). *Nirmaljit Kaur (2)* v. *State of Punjab*, (2006) 9 SCC 364: (2006) 2 SCC (Cri) 543: AIR 2006 SC 607.

Bench Strength **2**. Coram: *Ruma Pal* and **Dr. Ar. Lakshmanan**, JJ. [Date of decision: 6-12-2005]

(g) Compensation

— Arts. 32, 226, 21 and 300 — Compensation — Violation of Art. 21 involving custodial violence/death or illegal detention *See* 'Article 21' — Custodial death/violence, Arts. 21, 32, 226 and 300, (2006) 3 SCC 178

(h) Public Interest Litigation/PIL

[66] — Art. 32 — Fodder Scam cases — Appointment/change of Public Prosecutor — Interference by Supreme Court — *Held (per majority), appointment of advocates, Public Prosecutors, etc. is the prerogative of the Government in power and the court has no role to play — In the present case, if at all petitioners had any grievance regarding removal of the Public Prosecutor, they should have submitted the same before the Special Judge or the High Court — On facts, contention of petitioners that the prosecutor was purposely changed to give benefit to Respondents 4 and 5 is not correct and is not borne out by the material on record — However, CBI would be at liberty to make use of the services of the earlier prosecutor — Criminal Procedure Code, 1973, Ss. 24 and 25-A*

Per Balakrishnan, J.

The petitioners in the writ petitions have prayed to re-engage the same prosecutor who was handling the case in the trial court from the very beginning of the trial. From the averments made in the counter-affidavit, it is clear that the earlier Prosecutor Shri Ansari had completed the cases and examined all the witnesses for the prosecution as well as for the defence and he had also submitted his entire arguments to the Special Judge. Therefore, the contention of the petitioners that the prosecutor was purposely changed to give benefit to Respondents 4 and 5 is not correct. There is no allegation to prove that Respondents 4 and 5 had in any way interfered with the appointment of the Public Prosecutor. The petitioners could not produce any documents to show that the allegations made in the original petitions were true. If at all the petitioners had any grievance regarding the removal of the Public Prosecutor, they should have submitted their grievance before the Special Judge or before the High Court. The earlier prosecutor had already been deployed to conduct some other case and there is no necessity to give any direction to CBI. However, CBI would be at liberty to make use of the services of the earlier Prosecutor Shri Ansari. (Paras 20, 25 and 26)

Per Lakshmanan, J.

The appointment of lawyers is the prerogative of the Government and the prosecuting agency. The petitioners are trying to find fault with every attempt with every step taken. In cases like this delay is inevitable. Appointment of advocates, Public Prosecutors, etc. is the prerogative of the Government in power and the court has no role to play. (Paras 50 and 51)

The records would only go to show that Respondent 4 had no hand in the change of the prosecutor. (Para 58)

Further, certain allegations have been made against the Public Prosecutors, etc. None of them

were made parties before the Supreme Court. Therefore, the allegations made against them are one-sided and cannot be looked into at all. It cannot also be said that all these authorities have acted in a mala fide manner. (Para 57). *Rajiv Ranjan Singh 'Lalan' (VIII)* v. *Union of India*, (2006) 6 SCC 613: (2006) 3 SCC (Cri) 125.

Bench Strength 3. Coram: **K.G. Balakrishnan**[1], **Dr. Ar. Lakshmanan**[2] and **S.H. Kapadia**[3], JJ. [Date of decision: 21-8-2006]

[67] — Art. 32 — Fodder Scam cases — Monitoring of case — Scope — *Per Lakshmanan, J., once a charge-sheet is filed in the competent court after completion of the investigation, process of monitoring by Supreme Court comes to an end thereafter — It is only the court in which charge-sheet is filed which is to deal with all matters relating to the trial of the accused — Criminal Procedure Code, 1973, S. 173*

Per Lakshmanan, J.

Once a charge-sheet is filed in the competent court after completion of the investigation, the process of monitoring by the Supreme Court for the purpose of making CBI and other investigative agencies concerned perform their function of investigating into the offences concerned comes to an end and thereafter it is only the court in which the charge-sheet is filed which is to deal with all matters relating to the trial of the accused including matters falling within the scope of Section 173(8). Monitoring of the pending trial is subversion of criminal law as it stands to mean that the court behind the back of the accused is entering into a dialogue with the investigating agency. Therefore, there can be no monitoring, after the charge-sheet is filed. (Paras 37 and 38). *Rajiv Ranjan Singh 'Lalan' (VIII)* v. *Union of India*, (2006) 6 SCC 613: (2006) 3 SCC (Cri) 125.

Bench Strength 3. Coram: **K.G. Balakrishnan**[1], **Dr. Ar. Lakshmanan**[2] and **S.H. Kapadia**[3], JJ. [Date of decision: 21-8-2006]

Union of India v. Sushil Kumar Modi, (1998) 8 SCC 661: 1999 SCC (Cri) 84, followed

Vineet Narain v. Union of India, (1996) 2 SCC 199: 1996 SCC (Cri) 264, cited

[68] — Art. 32 — Fodder Scam cases — Locus standi/Standing — Criminal matters — Standing to question conduct of criminal proceedings — *Held (per majority: per Balakrishnan, J.), it is for the prosecution to prove its case and for the accused (Respondents 4 and 5) to prove that they did not have disproportionate income as alleged by the prosecution — It is a criminal litigation exclusively between Respondents 4 and 5 and the State — Nobody else has got any right to interfere, especially by way of PIL or else such PIL would only hamper the course of justice and may cause prejudice to accused denying them a fair trial, and may even damage prosecution case — Moreover, on facts, though petitioners have alleged a series of irregularities, they are not supported by basic facts having a solid foundation — Held (per majority: per Lakshmanan, J.), PIL is totally foreign to pending criminal proceedings — Petitioners are waging a political battle against Respondents 4 and 5 through medium of PIL, which is impermissible — Per Kapadia, J. (dissenting), the question of sufficient interest of the petitioner cannot be considered in the abstract — It must be taken together with the legal and factual context — Prevention of Corruption Act, 1988, Ss. 27, 5 and 13(1)(e) — Criminal Procedure Code, 1973, Ss. 403, 397 to 399 and 401*

These writ petitions were filed as public interest litigation by the two petitioners who were Members of Parliament at the time of filing of the petitions. Respondents 4 and 5 were formerly Chief Ministers of the State of Bihar. It was alleged by the petitioners that they had filed writ petitions before the High Court alleging large-scale defalcation of public funds and falsification of accounts involving hundreds of crores of rupees in the Department of Animal Husbandry in the State of Bihar and pursuant to these allegations, several cases were registered by the police and investigation of these cases was later handed over to CBI. The petitioners alleged that consequent upon change of the Government at the Centre, attempts had been made to delay and interfere with the judicial process. It was alleged that the Public Prosecutors who were handling the cases were removed, and to protect the interests of Respondents 4 and 5, Rabri Devi and Lalu Prasad Yadav, respectively, a convenient prosecutor was appointed.

Respondent 5 was an accused in a case registered under the Prevention of Corruption Act, 1988. The allegation in that case was that Respondent 5 as Chief Minister of Bihar between 1990 to 1996 had acquired assets disproportionate to his known sources of income. Charge-sheet was filed in the Court of the Special Judge, CBI, Patna on 4-4-2000 under Section 13(1)(*e*) of the Prevention of Corruption Act, 1988. Respondent 4 was also charge-sheeted in the same case for abetment under Section 109 IPC read with Section 13(2) and Section 13(1)(*e*) of the Prevention of Corruption Act, 1988. This case was renumbered as Special Case No. 5 of 1998 and was pending trial in the Court of the Special Judge, CBI, Patna. The petitioners alleged that certain income tax cases of Respondents 4 and 5 were also pending before the Income Tax Appellate Tribunal (ITAT) and one D.K. Tyagi who was a member of ITAT had been hearing those cases and that Respondents 4 and 5 found it difficult to pursue the hearings before the said ITAT member and hence under their influence Mr Tyagi

(h) Public Interest Litigation/PIL *(contd.)*

was sent on deputation and he was replaced by one Mr Mohanarajan who was on the verge of retirement. It was further alleged that the new member along with another member heard these cases within two weeks and orders were pronounced in favour of Respondents 4 and 5. It was also alleged that Respondent 3, namely, the Central Board of Direct Taxes did not prefer an appeal in these cases though the decision went against the Revenue. This, according to the petitioners, was to help Respondents 4 and 5 in the cases filed against them.

The petitioners also alleged that Special Case No. 5 of 1998 pending before the Special Judge, CBI was at the final stage of hearing and that the Director, CBI, presumably under pressure from the accused changed the prosecutor and appointed one Oma Shankar Singh who was only a retired Deputy Superintendent of Delhi Police and had no experience of conducting the prosecution. According to the petitioners, this was done at the fag end of the prosecution case to help the accused. The petitioners also made allegations against Respondents 1 to 3 that they were acting arbitrarily and interfering in the judicial process to benefit Respondents 4 and 5. The petitioners alleged that Respondents 4 and 5 obtained stay of proceedings of the case pending before the Special Judge from the Supreme Court, suppressing some material facts. It was alleged that Respondents 4 and 5 still wielded influence and power and, therefore, the Supreme Court should monitor the trial of the case pending before the Special Judge, CBI, at Patna.

In these writ petitions, the petitioners prayed mainly for four reliefs. The first relief prayed for was to issue an appropriate writ, order or direction monitoring the conduct of the trials relating to Fodder Scam cases' proceedings against Respondents 4 and 5 in the State of Bihar and the State of Jharkhand. The second prayer was to appoint the very same prosecutor who had been conducting the prosecution earlier and to direct the High Court to see that no prosecutor or CBI officer attached with the investigation and trial of the case was removed, harassed or victimised for discharging their duties. The petitioners also prayed that at least one inspector be provided for each Fodder case. The petitioners also prayed for cancellation of bail granted to Respondents 4 and 5. The petitioners further prayed for a direction to Respondents 1 to 3 to file an appeal against the orders passed by ITAT.

During the pendency of these writ petitions, the petitioners further alleged that the Special Judge who was trying Special Case No. 5 of 1998 involving Respondents 4 and 5, had been replaced by another Special Judge. The allegation was that one Yogender Prasad was the CBI Special Judge and he had been replaced by one Munni Lal Paswan and this according to the petitioners was deliberately done to help Respondents 4 and 5. Therefore, it was prayed that the said Special Judge be replaced by another judicial officer.

Dismissing the writ petitions and vacating all interim orders,

Held :

Per majority:

Per Balakrishnan, J.

Special Case No. 5 of 1998 has been filed against Respondents 4 and 5 alleging that they had amassed wealth disproportionate to their known sources of income while holding the post of Chief Minister of the State of Bihar. Both the petitioners are not in any way connected with this case. They are not de facto complainants in this case. They are absolutely strangers as regards the criminal cases against Respondents 4 and 5 which were pending before the Special Judge. It is for the prosecution to prove its case and Respondents 4 and 5 to deny that the allegations are not true and they did not have the disproportionate income as alleged by the prosecution. It is a criminal litigation exclusively between Respondents 4 and 5 and the State. It is also important to note that in a case of this nature nobody else has got any right to interfere especially by way of public interest litigation or else such public interest litigation would only hamper the course of justice and may cause prejudice to the accused by denying them a fair trial. This unnecessary interference in the criminal case may cause, sometimes, damage to the prosecution case also. In any view of the matter, this sort of interference in the criminal prosecution would only deny a fair trial to the accused. In this case, as early as 2004, 132 witnesses were examined on the side of the prosecution and 93 witnesses were examined on the defence side. Arguments of the prosecution were over as early as on 14-7-2004 and the defence arguments continued up to 19-7-2004. Because of the present public interest litigation, the trial could not be conducted. It is equally important to note that though the petitioners have alleged a series of irregularities, they are not supported by basic facts having solid foundation. (Paras 21 and 25)

Per Lakshmanan, J.

Public interest litigation is meant for the benefit of the lost and lonely and it is meant for the benefit of those whose social backwardness is the reason for no access to the court. PILs are not meant to advance the political gain and also settle scores under the guise of a public interest litigation and to fight a legal

battle. PIL is totally foreign to pending criminal proceedings. (Para 58)

The petitioners are waging a political battle against Respondents 4 and 5 through the medium of public interest litigation. The venue for political battle can never be the Supreme Court by filing a writ petition under Article 32 of the Constitution. (Para 60)

Per Kapadia, J. (dissenting)

The test which one has to apply to decide the maintainability of the PIL concerns sufficiency of the petitioner's interest. Under this test it is necessary to consider the subject-matter to which the PIL relates. It is wrong in law for the court to judge the applicant's interest without looking at the subject-matter of his complaint. If the petitioner shows failure of public duty, the court would be in error in dismissing his PIL. The question of sufficient interest of the petitioner cannot be considered in the abstract. It must be taken together with the legal and factual context. (Paras 77 and 78). *Rajiv Ranjan Singh 'Lalan' (VIII)* v. *Union of India*, (2006) 6 SCC 613: (2006) 3 SCC (Cri) 125.

Bench Strength 3. Coram: **K.G. Balakrishnan**[1], **Dr. Ar. Lakshmanan**[2] and **S.H. Kapadia**[3], JJ. [Date of decision: 21-8-2006]

[69] — Art. 32 — Income tax matters — Prayer for direction to Revenue to file appeal under S. 260-A, IT Act, 1961 — Maintainability of — *Held (per majority), in collateral proceedings like PIL under Art. 32, remedy of writ of mandamus cannot be sought directing the authorities to file appeals against orders of ITAT — In any case, on facts, the petitioners could not point out anything to show that there were serious procedural irregularities on part of Revenue in not filing the appeal or that Respondents 4 and 5, former Chief Ministers of State of Bihar, had exerted any undue influence in taking of the decision not to file appeal — Ministries of Law and Finance, which had been consulted in this regard, had opined that no substantial questions of law arose in the matters concerned to warrant filing of an appeal — Hence there is no reason to give any direction to Revenue to file an appeal — Per Kapadia, J. (dissenting), PIL is not maintainable to probe or enquire into returns of another taxpayer except in special circumstances — When scams take place, accusation of disproportionate assets is required to be looked into — Scope and test for judicial review in such matters, discussed — Concern in the present case is strictly with the decision-making process by which Revenue decided not to file an appeal despite there being substantial questions of law, particularly involving interpretation of Ss. 131, 131(1-A), 273-A and 147/148, IT Act, arising from impugned judgment of ITAT — Income Tax Act, 1961, S. 260-A*

Per majority:

Per Balakrishnan, J.

The petitioners have prayed that the Supreme Court should direct the authorities to file an appeal against the orders passed by ITAT in the cases of Respondents 4 and 5. In collateral proceedings like this, the petitioner cannot seek any remedy of writ of mandamus directing the authorities to file appeals against such orders. An appeal is a statutory remedy available to the Revenue Department and a third party like the writ petitioner cannot seek such remedies in collateral proceedings like this. Moreover, the petitioners could not point out anything to show that there were serious procedural irregularities on the part of the Revenue Department in not filing the appeal. The Revenue Department had taken the opinion of the Central Board of Direct Taxes as well as the Ministry of Finance and the Ministry of Finance had sought the opinion of the Ministry of Law. The petitioners have not made any specific allegation that these decisions were taken at the behest of Respondents 4 and 5 or any undue influence was exerted to take such decisions. The allegations made by the petitioners are vague and indefinite. Therefore, the prayer for writ of mandamus to direct Respondents 1 to 3 to file an appeal against ITAT orders cannot be allowed and is liable to be rejected. Respondents 1 to 3, after following the due procedure, have decided not to file an appeal against the order passed by ITAT and there is no reason to give any direction to file an appeal. (Paras 14 and 27)

Per Lakshmanan, J.

The Government of India cannot be directed file an appeal in the income tax matters. The Government of India has taken into consideration the views of the Ministry of Law and the Ministry of Finance to the effect that no substantial questions of law arise out of the judgments of ITAT in the case of Respondents 4 and 5 for filing appeals before the High Court and instructions were issued that appeals would not be filed in respect of those cases. The records would only go to show that Respondent 4 had no hand in the decision not to file an appeal in the income tax cases. (Paras 53, 56 and 58)

Per Kapadia, J. (dissenting)

PIL is not maintainable to probe or enquire into the returns of another taxpayer except in special circumstances. When scams take place, accusation of disproportionate assets is required to be looked into. The test which one has to apply to decide the maintainability of the PIL concerns sufficiency of the petitioner's interest. Under this test it is necessary to consider the subject-matter to which the PIL relates. It is wrong in law for the court to judge the applicant's

(h) Public Interest Litigation/PIL *(contd.)*

interest without looking at the subject-matter of his complaint. If the petitioner shows failure of public duty, the court would be in error in dismissing his PIL. The question of sufficient interest of the petitioner cannot be considered in the abstract. It must be taken together with the legal and factual context. (Paras 84, 77 and 78)

The source of the funds plays a crucial role in investigations by CBI in matters involving misappropriation of public funds. Departments have to work in tandem. The evidentiary value of the collected material in the criminal trial is a matter different from the collection of information by the officers of the Revenue Department. (Para 85)

The management of tax recovery falls within the domain of the Revenue but if that act of management is found to be based on exercise of its authority for extraneous reasons, then judicial review would certainly lie. The Revenue Department is in charge of assessment and collection of taxes for the welfare of the State; it is responsible for good management under the statute; if it is found that the Board is proposing to exercise its authority or if the Board is refraining itself from exercising its power not for good reasons of good management but for some extraneous or ulterior reasons then that action or inaction by the Board would be *ultra vires* and such a matter would be a proper matter for judicial review. (Para 78)

Applying the above test it has to be ascertained in the present case whether the decision of the Government in not preferring the appeal to the High Court under Section 260-A of the IT Act, 1961 constituted inaction on the part of the Revenue Department. This question needs to be answered not in the abstract but having regard to the position in law and having regard to the facts of the present case. (Para 79)

True value of a decision lies in its propriety and not in the decision being right or wrong. In this case the concern is not with the merits of the allegations but strictly with the decision-making process in the matter of the Revenue Department not moving in appeal to the High Court under Section 260-A of the IT Act despite there being substantial questions of law arising from the impugned judgment of the Tribunal. The allegations made in the petitions are not only against the accused, they are also directed against a number of functionaries. It is, therefore, made clear that this decision is only to rectify the procedure of decision-making at the Revenue level so that in future such anomalies do not arise. (Paras 76, 100 and 102)

Additions had been made by the Revenue Department to the income of the assessee Respondent 4 under various orders passed by the assessing officer and the Commissioner of Income Tax (Appeals). These orders were challenged by the assessee before the Tribunal. By the impugned judgment the appeals filed by the assessee were allowed by the Tribunal. While allowing the appeal of the assessee the Tribunal held that the case involved highly intricate issues; that, these issues were extremely difficult to understand; that, but for the assistance of the learned advocates on both sides it was difficult to adjudicate such disputes. At the same time the Tribunal without any basis castigated the officers of the Revenue Department including the Commissioner (Appeals) saying that rampant additions were made to the income of the assessees to destroy the case of the assessees and to destroy the political career of Respondent 5. Similarly, the Tribunal has castigated the higher officers of the Department saying that they were biased and that they had acted at the behest of the Centre in clubbing the income of Respondent 4 with that of Respondent 5, who was going through political crisis. (Paras 81 and 82)

There is no basis given in the impugned decision of the Tribunal for making such strong observations against the officers of the Revenue. Such comments have been made without any basis and yet till today appeals have not been filed by the Government under Section 260-A of the IT Act. Although the High Court under Section 260-A of the IT Act would not have enquired into the sufficiency of materials or substituted its judgment for that of the Tribunal in regard to facts, nevertheless, if the conclusion drawn by the Tribunal is without any basis or based on irrelevant considerations then the High Court was required to interfere under Section 260-A. (Paras 83 and 85)

Even the Tribunal has observed in its judgment that complicated legal issues were involved in the matter; that, even the members of the Tribunal found it very difficult to understand those issues, particularly, matters involving interpretation of Sections 131, 131(1-A), 273-A and 147/148 of the IT Act. If the issues were so difficult for the members to understand it cannot be appreciated why high-ranking officers of the Department were castigated by the Tribunal. The Supreme Court has noticed in a number of cases that even an innocuous statement of the Tribunal against the Revenue Officers is challenged before the higher courts on the ground that such observations are aspersions against the officers who have performed their duty and that they need to be expunged. Surprisingly, in this particular case till date no such appeal has been filed under Section 260-A of the IT, Act. Besides, the judgment of the Jurisdictional Tribunal on the scope and interpretation of the above sections which the Tribunal itself says involve complex legal issues, is binding on the assessing officers and the Appellate

Authority within that jurisdiction. If so it cannot be understood why the Department has not moved in appeal under Section 260-A of the IT Act. (Para 85)

Moreover, arguments have been vehemently advanced on behalf of Respondent 1 Union of India saying that these petitions need to be dismissed as the petitioners have made irresponsible statements against judicial officers and members of the Tribunal whose service records are sought to be tarnished. Applying the same yardstick one fails to understand as to why the Revenue has not moved in appeal even when its own higher officers are branded as biased in deciding the matters against Respondents 4 and 5. Their service records are as important as the service records of members of the trial court or the judicial officers. (Para 86)

The Union of India is therefore directed to reconsider approaching the High Court against the decision of the Tribunal dated 2-7-2004 under Section 260-A of the Income Tax Act, 1961 after applying its mind afresh, taking its decision keeping in mind the factors referred to hereinabove. (Paras 85 and 101). *Rajiv Ranjan Singh 'Lalan' (VIII)* v. *Union of India*, (2006) 6 SCC 613: (2006) 3 SCC (Cri) 125.

Bench Strength **3**. Coram: **K.G. Balakrishnan**[1], **Dr. Ar. Lakshmanan**[2] and **S.H. Kapadia**[3], JJ. [Date of decision: 21-8-2006]

[70] — Art. 32 — Parties — Prayer for direction to re-engage original Public Prosecutor — Allegations made against Public Prosecutor, etc. of impropriety — Need for impleadment of — *Held (per Lakshmanan, J.), since none of these parties were made parties before Supreme Court, allegations against them cannot be looked into at all — Civil Procedure Code, 1908, Or. 1 R. 9 — Criminal Procedure Code, 1973, Ss. 24 and 24-A*

Certain allegations have been made against the Public Prosecutors, etc. None of them were made parties before the Supreme Court. Therefore, the allegations made against them are one-sided and cannot be looked into at all. It cannot also be said that all these authorities have acted in a mala fide manner. (Para 57). *Rajiv Ranjan Singh 'Lalan' (VIII)* v. *Union of India*, (2006) 6 SCC 613: (2006) 3 SCC (Cri) 125.

Bench Strength **3**. Coram: **K.G. Balakrishnan**[1], **Dr. Ar. Lakshmanan**[2] and **S.H. Kapadia**[3], JJ. [Date of decision: 21-8-2006]

[71] — Art. 32 — Parties — Prayer for direction to Revenue to file appeal under S. 260-A, IT Act, 1961 — Allegations made against CBDT, members of ITAT, etc. of impropriety — Need for impleadment of such parties — *Held (per Lakshmanan, J.), since none of these parties were made parties before Supreme Court, allegations against them cannot be looked into at all — Civil Procedure Code, 1908, Or. 1 R. 9 — Income Tax Act, 1961, S. 260-A*

Certain allegations have been made against CBDT and members of the Income Tax Tribunal, etc. None of them were made parties before the Supreme Court. Therefore, the allegations made against them are one-sided and cannot be looked into at all. It cannot also be said that all these authorities have acted in a mala fide manner. (Para 57). *Rajiv Ranjan Singh 'Lalan' (VIII)* v. *Union of India*, (2006) 6 SCC 613: (2006) 3 SCC (Cri) 125.

Bench Strength **3**. Coram: **K.G. Balakrishnan**[1], **Dr. Ar. Lakshmanan**[2] and **S.H. Kapadia**[3], JJ. [Date of decision: 21-8-2006]

— Art. 32 — PIL — Maintainability — Locus standi/Standing — Test for *See* 'Article 32' — Public Interest Litigation/PIL, Arts. 32, 233 and 235, (2006) 6 SCC 613

[72] — Art. 32 — PIL — Corruption — Taj Corridor scam — Supreme Court monitored corruption cases — *Govt. officers involved in the scam — Disciplinary action to be taken against such officers — Directions given to CBI and respective Govts. in respect of — Public Accountability and Vigilance — Corruption. M.C. Mehta* v. *Union of India*, (2007) 1 SCC 136: (2007) 1 SCC (Cri) 291.

Bench Strength **3**. Coram: *Ruma Pal*, *S.B. Sinha* and *S.H. Kapadia*, JJ. [Date of decision: 19-7-2004]

[73] — Art. 32 — PIL — Corruption — Taj Corridor scam — Supreme Court monitored corruption cases — *Govt. officers involved in the scam — Disciplinary action to be taken against such officers — Directions given to CBI and respective Govts. in respect of — Public Accountability and Vigilance — Corruption. M.C. Mehta* v. *Union of India*, (2007) 1 SCC 137: (2007) 1 SCC (Cri) 292.

Bench Strength **3**. Coram: *Ruma Pal*, *S.B. Sinha* and *S.H. Kapadia*, JJ. [Date of decision: 25-10-2004]

[74] — Art. 32 — PIL — Corruption — Taj Corridor scam — Supreme Court monitored corruption cases — *Govt. officers involved in the scam — Disciplinary action to be taken against such officers — Directions given to CBI and respective Govts. in respect of — Public Accountability and Vigilance — Corruption. M.C. Mehta* v. *Union of India*, (2007) 1 SCC 141: (2007) 1 SCC (Cri) 296.

Bench Strength **3**. Coram: *Ruma Pal*, *S.B. Sinha* and *S.H. Kapadia*, JJ. [Date of decision: 14-3-2005]

[75] — Art. 32 — Rationale for PIL — *Per Lakshmanan, J., PIL is meant for benefit of the lost and lonely and it is meant for those whose social backwardness is the reason for no access to the court — PILs are not meant to advance political gain and settle scores*

(h) Public Interest Litigation/PIL *(contd.)*

Public interest litigation is meant for the benefit of the lost and lonely and it is meant for the benefit of those whose social backwardness is the reason for no access to the court. PILs are not meant to advance the political gain and also settle scores under the guise of a public interest litigation and to fight a legal battle. PIL is totally foreign to pending criminal proceedings. (Para 58). *Rajiv Ranjan Singh 'Lalan' (VIII)* v. *Union of India*, (2006) 6 SCC 613: (2006) 3 SCC (Cri) 125.

Bench Strength 3. Coram: **K.G. Balakrishnan**[1], **Dr. Ar. Lakshmanan**[2] and **S.H. Kapadia**[3], JJ. [Date of decision: 21-8-2006]

[76] — Art. 32 — Test to decide maintainability of PIL — *Per Kapadia, J., the test which one has to apply concerns sufficiency of the petitioner's interest and it is necessary to consider subject-matter to which the PIL relates*

The test which one has to apply to decide the maintainability of the PIL concerns sufficiency of the petitioner's interest. Under this test it is necessary to consider the subject-matter to which the PIL relates. It is wrong in law for the court to judge the applicant's interest without looking at the subject-matter of his complaint. If the petitioner shows failure of public duty, the court would be in error in dismissing his PIL. The question of sufficient interest of the petitioner cannot be considered in the abstract. It must be taken together with the legal and factual context. (Paras 77 and 78). *Rajiv Ranjan Singh 'Lalan' (VIII)* v. *Union of India*, (2006) 6 SCC 613: (2006) 3 SCC (Cri) 125.

Bench Strength 3. Coram: **K.G. Balakrishnan**[1], **Dr. Ar. Lakshmanan**[2] and **S.H. Kapadia**[3], JJ. [Date of decision: 21-8-2006]

[77] — Arts. 32 and 21 — Fodder Scam cases — Interference in bail matters — Scope — *Held (per majority), the liberty of an accused cannot be taken away except in accordance with the established procedure of law under the Constitution, criminal procedure and other cognate statutes — Prayer for cancellation of bail at instance of the petitioners in the present case cannot at all be countenanced since documents on record show that Respondents 4 and 5 (the accused) have never interfered with the conduct of trial or the income tax proceedings, nor does the record show that they were deliberately protracting the trial to take unnecessary adjournments — Criminal Procedure Code, 1973, Ss. 437 and 439*

Per Balakrishnan, J.

The petitioners could not prove anything that Respondents 4 and 5 have interfered in the course of justice and they misused the privilege of bail extended to them. The petitioners have also no case that they are likely to flee from justice. The petitioners have not made out any case for cancellation of their bail. (Para 28)

Per Lakshmanan, J.

The liberty of an accused cannot be taken away except in accordance with the established procedure of law under the Constitution, criminal procedure and other cognate statutes. The prayer for cancellation of the bail at the instance of the petitioner cannot at all be countenanced. The submission that Respondents 4 and 5 are interfering with the cause of justice so far as conduct of the trial and IT proceedings are concerned and, therefore, the bail granted to them is liable to be cancelled has no merits in view of the various documents and annexures, etc. to the effect that Respondents 4 and 5 have never interfered with the conduct of trial or with the IT proceedings. It is stated that Respondents 4 and 5 are deliberately protracting the trial by taking unnecessary adjournments. Then that itself would be a ground for cancellation of bail. This argument has no substance. It is a fact that the matter was adjourned at the instance of the defence on various occasions. The court itself has adjourned the matter for various reasons. It cannot therefore be held that the delay is solely attributable to Respondents 4 and 5 which cannot be a ground for cancellation of bail when it is not proved that any of the bail conditions has been violated. The delay is attributable to both the prosecution and the defence and also to the Court. Therefore, Respondents 4 and 5 cannot be held responsible for the delay. (Paras 58 and 45). *Rajiv Ranjan Singh 'Lalan' (VIII)* v. *Union of India*, (2006) 6 SCC 613: (2006) 3 SCC (Cri) 125.

Bench Strength 3. Coram: **K.G. Balakrishnan**[1], **Dr. Ar. Lakshmanan**[2] and **S.H. Kapadia**[3], JJ. [Date of decision: 21-8-2006]

Lalu Prasad v. State of Jharkhand, (2006) 6 SCC 661, referred to

[78] — Arts. 32, 233 and 235 — PIL — Scope of interference — Fodder Scam cases — Appointment of Special Judge in — Interference by Supreme Court, if warranted — Availability and scrutiny of up-to-date Annual Confidential Reports (ACRs) of judicial officer(s) concerned — *Held (per majority), Supreme Court cannot go into question of appointment of a Special Judge which is exclusively within the domain of the High Court under Arts. 233 and 235 — It is not for Supreme Court to scrutinise correctness of the decision taken by High Court, that too at the instance of third parties — If at all the petitioners had any grievance regarding appointment of any particular judicial officer, proper remedy was to approach the High Court and to bring this fact to notice of the Chief Justice — In the present*

case, there is no material on record to show that there was any illegality or serious infraction of any procedure or that Respondent 4 (former Chief Minister of Bihar) had any hand in appointment of the CBI (Special Judge) in question — About the conduct and integrity of the Judge concerned, nothing adverse is reported against him, though of course in some years, he has been graded as "category B" with regard to his judicial performance — These are all matters considered by the appointing Standing Committee of High Court — Hence prayer of petitioners that said Judge be replaced by another judicial officer cannot be granted — Per Kapadia, J. (dissenting), it is wrong in law for the Court to judge applicant's interest in PIL without looking at the subject-matter of his complaint — In matter of economic scams, be it security transactions or Fodder Scams or Taj Corridor, economic interest of the country is at stake — These cases involve highly complicated questions and therefore posting of the Judge plays a vital role — Choice of candidate by High Court under Arts. 233 and 235 is an administrative function and falls in the domain of public law and, therefore, that choice has to be exercised on some standard, failing which judicial review steps in — If different standards or no standards are applied, it breaks the integrity of the process and brings in discrimination and arbitrariness which violates Art. 14 and therefore attracts judicial review — The concern in present case is hence strictly with the decision-making process by which Special Judge in question was appointed and not with the merits of the allegations — The facts in the present case show that different standards were applied for the appointment of the said Special Judge as compared to two other Judges appointed at the same meeting of the Standing Committee of the High Court — Prevention of Corruption Act, 1988, S. 3 — Criminal Procedure Code, 1973, Ss. 9, 13 and 18

These writ petitions were filed as public interest litigation by the two petitioners who were Members of Parliament at the time of filing of the petitions. Respondents 4 and 5 were formerly Chief Ministers of the State of Bihar. It was alleged by the petitioners that they had filed writ petitions before the High Court alleging large-scale defalcation of public funds and falsification of accounts involving hundreds of crores of rupees in the Department of Animal Husbandry in the State of Bihar and pursuant to these allegations, several cases were registered by the police and investigation of these cases was later handed over to CBI. The petitioners alleged that consequent upon change of the Government at the Centre, attempts had been made to delay and interfere with the judicial process. It was alleged that the Public Prosecutors who were handling the cases were removed, and to protect the interests of Respondents 4 and 5, Rabri Devi and Lalu Prasad Yadav, respectively, a convenient prosecutor was appointed.

Respondent 5 was an accused in a case registered under the Prevention of Corruption Act, 1988. The allegation in that case was that Respondent 5 as Chief Minister of Bihar between 1990 to 1996 had acquired assets disproportionate to his known sources of income. Charge-sheet was filed in the Court of the Special Judge, CBI, Patna on 4-4-2000 under Section 13(1)(*e*) of the Prevention of Corruption Act, 1988. Respondent 4 was also charge-sheeted in the same case for abetment under Section 109 IPC read with Section 13(2) and Section 13(1)(*e*) of the Prevention of Corruption Act, 1988. This case was renumbered as Special Case No. 5 of 1998 and was pending trial in the Court of the Special Judge, CBI, Patna. The petitioners alleged that certain income tax cases of Respondents 4 and 5 were also pending before the Income Tax Appellate Tribunal (ITAT) and one D.K. Tyagi who was a member of ITAT had been hearing those cases and that Respondents 4 and 5 found it difficult to pursue the hearings before the said ITAT member and hence under their influence Mr Tyagi was sent on deputation and he was replaced by one Mr Mohanarajan who was on the verge of retirement. It was further alleged that the new member along with another member heard these cases within two weeks and orders were pronounced in favour of Respondents 4 and 5. It was also alleged that Respondent 3, namely, the Central Board of Direct Taxes did not prefer an appeal in these cases though the decision went against the Revenue. This, according to the petitioners, was to help Respondents 4 and 5 in the cases filed against them.

The petitioners also alleged that Special Case No. 5 of 1998 pending before the Special Judge, CBI was at the final stage of hearing and that the Director, CBI, presumably under pressure from the accused changed the prosecutor and appointed one Oma Shankar Singh who was only a retired Deputy Superintendent of Delhi Police and had no experience of conducting the prosecution. According to the petitioners, this was done at the fag end of the prosecution case to help the accused. The petitioners also made allegations against Respondents 1 to 3 that they were acting arbitrarily and interfering in the judicial process to benefit Respondents 4 and 5. The petitioners alleged that Respondents 4 and 5 obtained stay of proceedings of the case pending before the Special Judge from the Supreme Court, suppressing some material facts. It was alleged that Respondents 4 and 5 still wielded influence and power and, therefore, the Supreme Court should monitor the trial of the case pending before the Special Judge, CBI, at Patna.

(h) Public Interest Litigation/PIL *(contd.)*

In these writ petitions, the petitioners prayed mainly for four reliefs. The first relief prayed for was to issue an appropriate writ, order or direction monitoring the conduct of the trials relating to Fodder Scam cases' proceedings against Respondents 4 and 5 in the State of Bihar and the State of Jharkhand. The second prayer was to appoint the very same prosecutor who had been conducting the prosecution earlier and to direct the High Court to see that no prosecutor or CBI officer attached with the investigation and trial of the case was removed, harassed or victimised for discharging their duties. The petitioners also prayed that at least one inspector be provided for each Fodder case. The petitioners also prayed for cancellation of bail granted to Respondents 4 and 5. The petitioners further prayed for a direction to Respondents 1 to 3 to file an appeal against the orders passed by ITAT.

During the pendency of these writ petitions, the petitioners further alleged that the Special Judge who was trying Special Case No. 5 of 1998 involving Respondents 4 and 5, had been replaced by another Special Judge. The allegation was that one Yogender Prasad was the CBI Special Judge and he had been replaced by one Munni Lal Paswan and this according to the petitioners was deliberately done to help Respondents 4 and 5. Therefore, it was prayed that the said Special Judge be replaced by another judicial officer.

Dismissing the writ petitions and vacating all interim orders,

Held :

Per majority:

Per Balakrishnan, J.

Special Case No. 5 of 1998 has been filed against Respondents 4 and 5 alleging that they had amassed wealth disproportionate to their known sources of income while holding the post of Chief Minister of the State of Bihar. Both the petitioners are not in any way connected with this case. They are not de facto complainants in this case. They are absolutely strangers as regards the criminal cases against Respondents 4 and 5 which were pending before the Special Judge. It is for the prosecution to prove its case and Respondents 4 and 5 to deny that the allegations are not true and they did not have the disproportionate income as alleged by the prosecution. It is a criminal litigation exclusively between Respondents 4 and 5 and the State. It is also important to note that in a case of this nature nobody else has got any right to interfere especially by way of public interest litigation or else such public interest litigation would only hamper the course of justice and may cause prejudice to the accused by denying them a fair trial. This unnecessary interference in the criminal case may cause, sometimes, damage to the prosecution case also. In any view of the matter, this sort of interference in the criminal prosecution would only deny a fair trial to the accused. In this case, as early as 2004, 132 witnesses were examined on the side of the prosecution and 93 witnesses were examined on the defence side. Arguments of the prosecution were over as early as on 14-7-2004 and the defence arguments continued up to 19-7-2004. Because of the present public interest litigation, the trial could not be conducted. It is equally important to note that though the petitioners have alleged a series of irregularities, they are not supported by basic facts having solid foundation. (Paras 21 and 25)

The appointment of Shri Munni Lal Paswan as Special Judge is not challenged by the petitioners and no pleadings also made in the main writ petition. By filing a criminal miscellaneous application, and on the basis of oral arguments at the Bar the petitioners have made a series of allegations which are not borne out by any records. (Para 17)

There is no material on record to show that there was any illegality or serious infraction of any procedure in the appointment of the present CBI (Special Judge), Patna and the appointment as such cannot be challenged in a collateral proceedings and the Supreme Court cannot go into the question of appointment of a Special Judge which is exclusively within the domain of the High Court under Article 235 of the Constitution; the appointment in question having been validly made by High Court in this case. Therefore, the oral appeal of the petitioners that the present Special Judge is to be replaced by another judicial officer also cannot therefore be granted. If at all the petitioners had any grievance regarding the appointment of any particular officer, the proper remedy was to approach the High Court and to bring this fact to the notice of the Chief Justice. (Paras 17 and 26)

The entire records relating to the appointment of Shri Munni Lal Paswan as a Special Judge, CBI, Patna have been produced in this case including the confidential registers of the various officers. On perusal of these records it is found that the Standing Committee of the High Court took a decision to post Shri Munni Lal Paswan as the CBI Special Judge, Patna. Six seniormost Judges of the High Court of Patna constituted the Standing Committee of the High Court and the decision was taken in the meeting of the Committee held on 22-6-2005. (Paras 15 and 16)

The confidential reports of Shri Munni Lal Paswan from 1981 to 2003 have been produced in the Supreme Court. Of course, the confidential register of

Shri Munni Lal Paswan was available only up to 2003. For some period, he was working on deputation and the inspecting Judge had not recorded the confidential registers for that period, though the confidential registers of other officers were available to the Standing Committee. The confidential register of this officer shows that it has been repeatedly recorded that this officer has maintained honesty and integrity during the period under report. About his conduct and integrity, nothing adverse is reported against him. Of course, in some of the years, this officer has been graded as "category B" with regard to his judicial performance. These are all matters considered by the Standing Committee which consists of senior Judges of the High Court. (Para 17)

Per Lakshmanan, J.

Public interest litigation is meant for the benefit of the lost and lonely and it is meant for the benefit of those whose social backwardness is the reason for no access to the court. PILs are not meant to advance the political gain and also settle scores under the guise of a public interest litigation and to fight a legal battle. PIL is totally foreign to pending criminal proceedings. (Para 58)

The petitioners are waging a political battle against Respondents 4 and 5 through the medium of public interest litigation. The venue for political battle can never be the Supreme Court by filing a writ petition under Article 32 of the Constitution. (Para 60)

In the above case, the Standing Committee has taken a decision to appoint Munni Lal Paswan and other officers after scrutinising the records, ACRs, etc. in accordance with Articles 233 and 235 of the Constitution which is the prerogative right of the Standing Committee and the High Court, and when a decision is taken it is not for the Supreme Court to scrutinise the correctness of the decision, that too at the instance of third parties. (Para 52)

The records submitted by the High Court in regard to the officers including Munni Lal Paswan have been perused. There is absolutely no adverse entry against Munni Lal Paswan and that poor record if any is not the record of integrity and no gradation has been given to officers after 1997 onwards including Paswan. The resolution of the Standing Committee of the High Court was also placed before the Full Court which also approved the same. The records would only go to show that Respondent 4 had no hand in the appointment of judges. (Paras 47, 48 and 58)

Per Kapadia, J. (dissenting)

The test which one has to apply to decide the maintainability of the PIL concerns sufficiency of the petitioner's interest. Under this test it is necessary to consider the subject-matter to which the PIL relates. It is wrong in law for the court to judge the applicant's interest without looking at the subject-matter of his complaint. If the petitioner shows failure of public duty, the court would be in error in dismissing his PIL. The question of sufficient interest of the petitioner cannot be considered in the abstract. It must be taken together with the legal and factual context. (Paras 77 and 78)

True value of a decision lies in its propriety and not in the decision being right or wrong. In this case the concern is not with the merits of the allegations but strictly with the decision-making process in the posting of Mr Munni Lal Paswan, Special Judge, CBI, Patna. The allegations made in the petitions are not only against the accused, they are also directed against a number of functionaries. It is, therefore, made clear that this decision is only to rectify the procedure of decision-making at the High Court level so that in future such anomalies do not arise. (Paras 76, 100 and 102)

It is important to bear in mind that in the matter of economic scams, be it security transactions or Fodder Scams or Taj Corridor it is the economic interest of the country which is at stake. These cases are highly complicated in which complicated questions are involved and, therefore, posting of the Judge plays a vital role. (Para 98)

Institutional autonomy of the High Court on its administrative side under Article 233 and Article 235 is a well-known concept. It is based on public trust and confidence. Existence of the power, as a concept, is different from exercise of power. Promotions and posting of judicial officers fall within the domain of the High Court on its administrative side. At the same time it is important to note that choice of the candidate falls in the domain of public law and, therefore, that choice has to be exercised on some standard, failing which judicial review steps in. Standards of evaluation in matters of promotion and posting have to be uniformly applied otherwise arbitrariness comes in. Integrity of the evaluation process has to be maintained. If different standards or no standards are applied it breaks the integrity of the process which brings in discrimination and arbitrariness which violates Article 14 and therefore attracts judicial review. (Para 87)

In the present case it needs to be ascertained whether the standards applied to evaluate Mr J.P. Ratnesh and Mr Ram Niwas Prasad, trial Judges, appointed as Special Judges vide minutes of the meeting of the Standing Committee dated 22-6-2005, were equally applied while posting Mr Munni Lal Paswan

(h) Public Interest Litigation/PIL *(contd.)*

as Special Judge, CBI, Patna (Fodder Scam cases). (Para 88)

Ishwar Chand Jain case, (1999) 4 SCC 579, emphasises the importance of the remarks given by the Inspecting Judge. The object of inspection is to assess the work performed, capability, competency besides integrity of the candidate. These gradations/categorisations given by the Inspecting Judges are required to be placed before the Full Court. There is a prescribed form in which the Confidential Reports (CRs) are recorded. That form indicates various parameters, namely, knowledge of law, whether the officer is hardworking, the rating to be given in respect of the judgments, namely, A + (outstanding), A (very good), B + (good) and B (satisfactory). The point to be noted is that apart from honesty and integrity there are other parameters to be fulfilled by the judicial officers and that is where the disposals, ability and all other relevant factors come in. (Paras 97 and 92)

In the present case, gradation/categorisation was done for two out of three judicial officers when they were posted and no gradation/categorisation has been done after 1990 by the Inspecting Judge vis-à-vis the judgments of Mr Munni Lal Paswan. When Mr Paswan was promoted as ADJ there was no categorisation available. While the remarks of the Inspecting Judge, in the case of Mr J.P. Ratnesh and Mr Ram Niwas Prasad were duly updated when they were placed before the Standing Committee of the High Court. (Paras 97, 90 and 95)

The consolidated statement showing the out-turn of the work done by Mr Paswan during the period 1998-2004 and 2005 refers to various parameters like disposal, remarks of PO, remark of DJ, etc. as approved by the court. These remarks have been approved by the District Judge and by the courts. These remarks are heavily weighed against Mr Paswan. It is not clear whether these remarks were ever noticed by the Committee and if not they need to be relooked at by the High Court. (Para 91)

In the circumstances, it seems that the procedure followed by the High Court in the meeting on 22-6-2005 wherein Shri Munni Lal Paswan was appointed as Special Judge did not meet the above criteria. (Para 99)

In the circumstances, a request is being made to the Chief Justice of the Patna High Court to convene an urgent meeting of Administrative Judges and complete the exercise of giving appropriate gradation/categorisation after looking at the judgments and orders delivered by the Judge concerned, Mr Paswan. It is clarified that this is just a request to the High Court and not a direction so that the evaluation standards are commonly applied to all the three candidates. (Paras 99 and 107). *Rajiv Ranjan Singh 'Lalan' (VIII)* v. *Union of India*, (2006) 6 SCC 613: (2006) 3 SCC (Cri) 125.

Bench Strength **3**. Coram: **K.G. Balakrishnan**[1], **Dr. Ar. Lakshmanan**[2] and **S.H. Kapadia**[3], JJ. [Date of decision: 21-8-2006]

[79] — Arts. 32 and 233 — PIL — Abuse of power — Prosecution of people in power/Highly influential political personalities (Lalu Prasad Yadav and Rabri Devi) for various offences and scams — Appointment of Special Judge for CBI (Fodder Scam Cases) — Irregularities in promotion of judicial officer to post of Additional District Judge (ADJ) so that he could be designated as Special Judge to try Fodder Scam case — *ADJ, one* ***P****, whose name not appearing in submissions of Joint Registrar of High Court to Standing Committee for appointing Special Judges, appointed as Special Judge for CBI (Fodder Scam Cases) — High Court directed to explain how and on what basis name of* ***P*** *came to be considered by the Standing Committee and to give details of places, postings and/or promotions of remaining ADJs — Further, confidential records, remarks of Inspecting Judges and District Judges concerning* ***P*** *and gradation awarded by Standing Committee when* ***P*** *was promoted as ADJ, directed to be produced before Supreme Court — Lastly, High Court requested to clarify whether promotions and/or postings of ADJs were placed before and considered by Full Court or in any Committee consisting of Judges of the High Court — If so, minutes of meeting Committee/Full Court concerned when said ADJ was promoted as ADJ to be sent to Supreme Court — Similarly, minutes of meeting when he was posted as Special Judge in Fodder Scam case also to be sent — Registrar of High Court directed to be present on next date of hearing — Clarified that Chief Justice of Patna High Court, who had recently taken charge, was not in any way restrained from reconsidering who was to be posted for hearing of the Fodder Scam case concerned, if he was so inclined to do — Public Accountability and Vigilance — Abuse of power. Rajiv Ranjan Singh "Lalan" (VI)* v. *Union of India*, (2006) 1 SCC 356: (2006) 1 SCC (Cri) 251.

Bench Strength **3**. Coram: *S.N. Variava, Dr. Ar. Lakshmanan* and *S.H. Kapadia*, JJ. [Date of decision: 26-10-2005]

[80] — Arts. 32 and 233 — PIL — Abuse of power — Prosecution of people in power/highly influential political personalities (Lalu Prasad Yadav and Rabri Devi) for various offences and scams — Appointment of Special Judge for CBI (Fodder

Scam cases) — Irregularities in promotion of judicial officer to post of Additional District Judge (ADJ) so that he could be designated as Special Judge to try Fodder Scam case — *Observation made in* Rajiv Ranjan (VI), *(2006) 1 SCC 356, that Chief Justice of Patna High Court, who had recently taken charge, was not in any way restrained from reconsidering who was to be posted for hearing of the Fodder Scam case concerned, if he was so inclined to do, clarified, that the same was not be taken as a direction passed by the Supreme Court. Rajiv Ranjan Singh "Lalan" (VII)* v. *Union of India*, (2006) 1 SCC 359: (2006) 1 SCC (Cri) 254.

Bench Strength **3**. Coram: *K.G. Balakrishnan, Dr. Ar. Lakshmanan* and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2005]

Rajiv Ranjan Singh "Lalan" (VI) v. Union of India, (2006) 1 SCC 356, clarified

[**Ed.**: In respect of a detailed discussion as to the norms for interaction between the Supreme Court and the High Courts, see (2004) 5 SCC 1, Shortnote A.]

— **Art. 38** *See* Arts. 21, 25, 19(1)(a), 32, 38, 51-A(e) and Preamble

— **Art. 50** *See* Arts. 227, 235 & 50

— **Art. 51-A(e)** *See* Arts. 21, 25, 19(1)(a), 32, 38, 51-A(e) and Preamble

— **Art. 72** *See* Arts. 161 and 72

[81] — Arts. 72 and 161 — Clemency order under — Rescission/cancellation or withdrawal of — *Pardon/remission obtained on basis of manifest mistake, patent representation or fraud, held (per curiam), can be rescinded or cancelled — General Clauses Acts — General Clauses Act, 1897, Ss. 14 & 21*

If it comes to the knowledge of the Government that the pardon has been obtained on the basis of a manifest mistake or patent misrepresentation or fraud, the same can be rescinded or cancelled. (Paras 45 and 50). *Epuru Sudhakar* v. *Govt. of A.P.*, (2006) 8 SCC 161: (2006) 3 SCC (Cri) 438: AIR 2006 SC 3385.

Bench Strength **2**. Coram: **Arijit Pasayat**[1] and **S.H. Kapadia**[2], JJ. [Date of decision: 11-10-2006]

[82] — Arts. 72 and 161 — Clemency power — Nature and scope of, explained and discussed (per Kapadia, J.)

Granting of pardon is in no sense an overturning of a judgment of conviction, but rather it is an executive action that mitigates or sets aside the punishment for a crime. It eliminates the effect of conviction without addressing the defendant's guilt or innocence. (Para 66)

Pardons, reprieves and remissions are manifestation of the exercise of prerogative power. These are not acts of grace. They are a part of constitutional scheme. When a pardon is granted, it is the determination of the ultimate authority that public welfare will be better served by inflicting less than what the judgment has fixed. (Para 62)

Exercise of executive clemency is a matter of discretion and yet subject to certain standards. It is not a matter of privilege. It is a matter of performance of official duty. It is vested in the President or the Governor, as the case may be, not for the benefit of the convict only, but for the welfare of the people who may insist on the performance of the duty. This discretion, therefore, has to be exercised on public considerations alone. The President and the Governor are the sole judges of the sufficiency of facts and of the appropriateness of granting the pardons and reprieves. However, this power is an enumerated power in the Constitution and its limitations, if any, must be found in the Constitution itself. Therefore, the principle of exclusive cognizance would not apply when and if the decision impugned is in derogation of a constitutional provision. This is the basic working test to be applied while granting pardons, reprieves, remissions and commutations. (Para 65)

An undue exercise of this power is to be deplored. Considerations of religion, caste or political loyalty are irrelevant and fraught with discrimination. These are prohibited grounds. (Para 66)

The rule of law is the basis for evaluation of all decisions. The supreme quality of the rule of law is fairness and legal certainty. The principle of legality occupies a central plan in the rule of law. Every prerogative has to be subject to the rule of law. That rule cannot be compromised on the grounds of political expediency. To go by such considerations would be subversive of the fundamental principles of the rule of law and it would amount to setting a dangerous precedent. The rule of law principle comprises a requirement of "Government according to law". The ethos of "Government according to law" requires the prerogative to be exercised in a manner which is consistent with the basic principle of fairness and certainty. Therefore, the power of executive clemency is not only for the benefit of the convict, but while exercising such a power the President or the Governor, as the case may be, has to keep in mind the effect of his decision on the family of the victims, the society as a whole and the precedent it sets for the future. (Para 66)

The power under Article 72 as also under Article 161 of the Constitution is of the widest amplitude and envisages myriad kinds and categories of cases with facts and situations varying from case to case. The exercise of power depends upon the facts and circumstances of each case and the necessity or justification for exercise of that power has to be judged from case

to case. It is important to bear in mind that every aspect of the exercise of the power under Article 72 as also under Article 161 does not fall in the judicial domain. In certain cases, a particular aspect may not be justiciable. However, even in such cases there has to exist requisite material on the basis of which the power is exercised under Article 72 or under Article 161 of the Constitution, as the case may be. In the circumstances, one cannot draw the guidelines for regulating the exercise of the power. (Para 67)

Exercise or non-exercise of the power of pardon by the President or the Governor is not immune from judicial review. Though, the circumstances and the criteria to guide exercise of this power may be infinite, one principle is definite and admits of no doubt, namely, that the impugned decision must indicate exercise of the power by application of manageable standards and in such cases courts will not interfere in its supervisory jurisdiction. By manageable standards we mean standards expected in functioning democracy. A pardon obtained by fraud or granted by mistake or granted for improper reasons would invite judicial review. The prerogative power is the flexible power and its exercise can and should be adapted to meet the circumstances of the particular case. (Para 68). *Epuru Sudhakar* v. *Govt. of A.P.*, (2006) 8 SCC 161: (2006) 3 SCC (Cri) 438: AIR 2006 SC 3385.

Bench Strength **2**. Coram: **Arijit Pasayat**[1] and **S.H. Kapadia**[2], JJ. [Date of decision: 11-10-2006]

[83] — Arts. 72 and 161 — Exercise of power under — Necessity of reasons for — Supply of reasons to affected party as against disclosure of the same to Court — Difference in legal requirements in respect of — Kehar Singh case, *(1989) 1 SCC 204, clarified in this respect — Held (per curiam), absence of any obligation to convey reasons to affected party does not mean that there should not be legitimate or relevant reasons for passing the order — Power of judicial review, to the extent it is available, would be rendered futile in absence of reasons*

The observation in *Kehar Singh case*, (1989) 1 SCC 204 at p. 216, para 13 that, "[t]here is also no question involved in this case of asking for the reasons for the President's order" obviously means that the affected party need not be given the reasons. The question whether reasons can or cannot be disclosed to the court when the same is challenged was not the subject-matter of consideration in *Kehar Singh case*. In any event, the absence of any obligation to convey the reasons does not mean that there should not be legitimate or relevant reasons for passing the order. Since there is a power of judicial review, however, limited it may be, the same can be rendered to be an exercise in futility in the absence of reasons. (Paras 37, 38 and 43). *Epuru Sudhakar* v. *Govt. of A.P.*, (2006) 8 SCC 161: (2006) 3 SCC (Cri) 438: AIR 2006 SC 3385.

Bench Strength **2**. Coram: **Arijit Pasayat**[1] and **S.H. Kapadia**[2], JJ. [Date of decision: 11-10-2006]

Mohd. Sharif v. Federation of Pakistan, PLD 1988 Lah 725, approved

Kehar Singh v. Union of India, (1989) 1 SCC 204: 1989 SCC (Cri) 86, clarified

[84] — Arts. 72 and 161 — Grant of pardon or remission, etc. of sentences — Judicial review of — Availability of — *Held (per curiam), the same is available and the order of remission/pardon can be impugned*

Per Pasayat, J.

The function of determining whether the act of a constitutional or statutory functionary falls within the constitutional or legislative conferment of power, or is vitiated by self-denial on an erroneous appreciation of the full amplitude of the power, is a matter for the court. (Para 25)

The exercise or non-exercise of pardon power by the President or Governor, as the case may be, is not immune from judicial review. Limited judicial review is available in certain cases. (Para 22)

The position is undeniable that judicial review of the order of the President or the Governor under Article 72 or Article 161, as the case may be, is available and their orders can be impugned on the following grounds:

(*a*) that the order has been passed without application of mind;

(*b*) that the order is mala fide;

(*c*) that the order has been passed on extraneous or wholly irrelevant considerations;

(*d*) that relevant materials have been kept out of consideration;

(*e*) that the order suffers from arbitrariness. (Para 34)

Per S.H. Kapadia, J. (concurring)

Exercise of executive clemency is a matter of discretion and yet subject to certain standards. It is not a matter of privilege. It is a matter of performance of official duty. It is vested in the President or the Governor, as the case may be, not for the benefit of the convict only, but for the welfare of the people who may insist on the performance of the duty. This discretion, therefore, has to be exercised on public considerations alone. The President and the Governor are the sole judges of the sufficiency of facts and of the appropriateness of granting the pardons and reprieves. However, this power is an enumerated power in the Constitution and its limitations, if any,

must be found in the Constitution itself. Therefore, the principle of exclusive cognizance would not apply when and if the decision impugned is in derogation of a constitutional provision. This is the basic working test to be applied while granting pardons, reprieves, remissions and commutations. (Para 65)

An undue exercise of this power is to be deplored. Considerations of religion, caste or political loyalty are irrelevant and fraught with discrimination. These are prohibited grounds. (Para 66)

The rule of law is the basis for evaluation of all decisions. The supreme quality of the rule of law is fairness and legal certainty. The principle of legality occupies a central plan in the rule of law. Every prerogative has to be subject to the rule of law. That rule cannot be compromised on the grounds of political expediency. To go by such considerations would be subversive of the fundamental principles of the rule of law and it would amount to setting a dangerous precedent. The rule of law principle comprises a requirement of "Government according to law". The ethos of "Government according to law" requires the prerogative to be exercised in a manner which is consistent with the basic principle of fairness and certainty. Therefore, the power of executive clemency is not only for the benefit of the convict, but while exercising such a power the President or the Governor, as the case may be, has to keep in mind the effect of his decision on the family of the victims, the society as a whole and the precedent it sets for the future. (Para 66)

The constitutional justification for judicial review, and the vindication of the rule of law remain constant in all areas, but the mechanism for giving effect to that justification varies. (Para 68)

There is a clear symmetry between the constitutional rationale for review of statutory and prerogative power. In each case, the courts have to ensure that the authority is used in a manner which is consistent with the rule of law, which is the fundamental principle of good administration. In each case, the rule of law should be the overarching constitutional justification for judicial review. The exercise of prerogative power cannot be placed in straitjacket formula and the perceptions regarding the extent and amplitude of this power are bound to vary. However, when the impugned decision does not indicate any data or manageable standards, the decision amounts to derogation of an important constitutional principle of rule of law. (Para 69)

The controlling factor in determining whether the exercise of prerogative power is subject to judicial review is not its source but its subject-matter. It can no longer be said that prerogative power is *ipso facto* immune from judicial review. (Para 66)

The power under Article 72 as also under Article 161 of the Constitution is of the widest amplitude and envisages myriad kinds and categories of cases with facts and situations varying from case to case. The exercise of power depends upon the facts and circumstances of each case and the necessity or justification for exercise of that power has to be judged from case to case. It is important to bear in mind that every aspect of the exercise of the power under Article 72 as also under Article 161 does not fall in the judicial domain. In certain cases, a particular aspect may not be justiciable. However, even in such cases there has to exist requisite material on the basis of which the power is exercised under Article 72 or under Article 161 of the Constitution, as the case may be. In the circumstances, one cannot draw the guidelines for regulating the exercise of the power. (Para 67)

Exercise or non-exercise of the power of pardon by the President or the Governor is not immune from judicial review. Though, the circumstances and the criteria to guide exercise of this power may be infinite, one principle is definite and admits of no doubt, namely, that the impugned decision must indicate exercise of the power by application of manageable standards and in such cases courts will not interfere in its supervisory jurisdiction. By manageable standards we mean standards expected in functioning democracy. A pardon obtained by fraud or granted by mistake or granted for improper reasons would invite judicial review. The prerogative power is the flexible power and its exercise can and should be adapted to meet the circumstances of the particular case. (Para 68). *Epuru Sudhakar* v. *Govt. of A.P.*, (2006) 8 SCC 161: (2006) 3 SCC (Cri) 438: AIR 2006 SC 3385.

Bench Strength **2**. Coram: **Arijit Pasayat**[1] and **S.H. Kapadia**[2], JJ. [Date of decision: 11-10-2006]

Swaran Singh v. State of U.P., (1998) 4 SCC 75: 1998 SCC (Cri) 804, followed

R. v. Secy. of State for the Home Deptt., ex p Bentley, (1993) 4 All ER 442 (QBD); Burt v. Governor General, (1992) 3 NZLR 672, approved

[**Ed.**: For written submissions of the *Amicus* Mr Soli Sorabjee, Senior Advocate, *see* http://www.ebc-india.com]

— Art. 73 *See* Arts. 21, 19(1)(e) & 73

— Arts. 124 and 214 — Supreme Court and High Courts — Relationship between — Norms for interaction between — Mode of addressing High Courts adopted by Supreme Court *See* 'Article 32' — Public Interest Litigation/PIL, Arts. 32 and 233, (2006) 1 SCC 359

— Art. 105 *See* Arts. 21, 105 and 194

— Art. 123(1) *See* Arts. 213(1), 123(1), 32 and 226

[85] — Art. 129 — Instances — Strike/Boycott by lawyers — Delhi HCBA and SCBA taking

certain actions allegedly in contempt of *Common Cause case*, (2006) 9 SCC 304 — Action to be taken — *Events having occurred in 1999 and 2000, and there having been no repetition of the acts of the type alleged, no action to be taken — Legal position, however, reiterated — Contempt of Court — Contempt of Courts Act, 1971, Ss. 2(b) and 12*

The events concerned in these matters took place during 1999 and 2000 and since then there has been no repetition of the acts of the type alleged. Thus, apart from reiterating the well-settled legal position, as stated above, no action is proposed to be taken. (Para 2). *Common Cause, A Registered Society* v. *Union of India*, (2006) 9 SCC 295: (2006) 2 SCC (Cri) 493: AIR 2005 SC 4442: (2005) 123 DLT 664: (2005) 4 CPJ 4 (SC): 2005 Cri LJ 4978: (2006) 36 AIC 135 (SC).

Bench Strength **3**. Coram: *S.N. Variava, Dr. Ar. Lakshmanan* and *S.H. Kapadia*, JJ. [Date of decision: 28-9-2005]

Ex Capt. Harish Uppal v. Union of India, (2003) 2 SCC 45; Mahabir Prasad Singh v. Jacks Aviation (P) Ltd., (1999) 1 SCC 37; Ramon Services (P) Ltd. v. Subhash Kapoor, (2001) 1 SCC 118: 2001 SCC (Cri) 3: 2001 SCC (L&S) 152; Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409, followed

[86] — Arts. 129 and 215 — Contempt of Supreme Court — Disowning statements/Perjury by witness — Punishment to be imposed — *Supreme Court in* Zahira (1) case, *(2004) 4 SCC 158, directing retrial of* Best Bakery case *outside State of Gujarat, in State of Maharashtra, based inter alia on statements made by* **Z**, *who was also the first appellant before the Supreme Court, and star witness in* Best Bakery case *— Later however,* **Z** *disowning said statements made in Supreme Court and before NHRC, after success in* Zahira (1) case *— Supreme Court directing its Registry to conduct inquiry into the same — Inquiry Officer categorically finding that* **Z** *had changed her stands at different stages and departed from statements made before Supreme Court, and finding it highly probable that money had exchanged hands and that was the main inducement which made* **Z** *change her stands, although threats could also have played a role in reaching the agreement —* **Z** *and her family being unable to explain various receipts of money and deposits in their bank accounts during the period in question — Further, pleas taken by* **Z** *challenging credibility or acceptability of inquiry report not found to be made out — Inquiry report accepted — Held, the criminal justice system is likely to be affected if persons like* **Z** *are to be left unpunished — Increasingly people are believing that laws are like spiders' webs: if some light or powerless thing falls into them, it is caught, but a bigger one can break through and get away — Held,* **Z** *committed contempt of Supreme Court —* **Z** *therefore sentenced to one year's SI and directed to pay costs of Rs 50,000, and in default thereof, further one year's SI, and her assets directed to be attached for three months — Income tax authorities directed to (1) initiate proceedings requiring* **Z** *to explain sources of acquisition of various assets and expenses met by her from 1-1-2002 to date of this order, and (2) to make certain inquiries against accused* **M** *and* **B** *who had allegedly bribed* **Z** *to change her stand, and if any tangible material was discovered, to take appropriate action against them — Contempt of Courts Act, 1971, S. 12*

Zahira Habibullah Sheikh, who was projected as the star witness in the *Best Bakery case* made a grievance that she was intimidated, threatened and coerced to depart from the truth and to make a statement in the court which did not reflect the reality. The trial court on the basis of the statements made by the witnesses in the court directed acquittal of the accused persons. An application under Section 391, CrPC highlighting the necessity for accepting additional evidence was filed before the Gujarat High Court. The foundation was the statement made by Zahira. The High Court did not accept the prayer and that is why appeals came to be filed in the Supreme Court. By its judgment in *Zahira (1) case*, (2004) 4 SCC 158, the Supreme Court in the exceptional circumstances of the case directed re-trial of the case outside the State of Gujarat, in the State of Maharashtra. While the said re-trial was on before a court in Maharashtra pursuant to the Supreme Court's direction, Zahira gave a press statement in the presence of some government officials that what she had stated before the trial court in Gujarat earlier was correct. A petition was filed before the Supreme Court alleging that Zahira's statement was nothing but contempt of the Supreme Court. At a press conference held on 3-11-2004, a few days before the scheduled appearance of the witnesses in the said re-trial she disowned the statements made in the Supreme Court, and before various bodies like the National Human Rights Commission. While considering the said petition filed, by orders passed in *Zahira (3) case*, (2005) 4 SCC 292 and *Zahira (4) case*, (2005) 4 SCC 294, the Supreme Court inter alia directed the Registrar General of the Supreme Court to conduct an inquiry into the matter and submit a report to the Supreme Court within three months. The Registrar General inter alia was to indicate in the report (*a*) if Zahira Habibullah Sheikh was in any manner threatened, coerced, induced and/or in any manner pressurised to depose/make statement(s) in any particular way, by any person to persons, and (*b*) if the answer to (*a*) was in the affirmative, who the person/persons was (or) were. The Court further directed Zahira inter alia to file an affidavit indicating details and sources of her

own and her family members' bank accounts, advances, other deposits, amounts invested in movable or immovable properties and advances or security deposits, along with the affidavit to be filed before the Registrar General of the Supreme Court.

Disposing of the applications in the terms below,

Held :

Parliament by virtue of Entry 77 List I is competent to enact a law relating to the powers of the Supreme Court with regard to contempt of itself and such a law may prescribe the nature of punishment which may be imposed on a contemner by virtue of the provisions of Article 129 read with Article 142(2) of the Constitution. Since no such law has been enacted by Parliament, the nature of punishment prescribed under the Contempt of Courts Act, 1971 may act as a guide for the Supreme Court but the extent of punishment as prescribed under that Act can apply only to the High Courts, because the 1971 Act ipso facto does not deal with the contempt jurisdiction of the Supreme Court, except that Section 15 of the Act prescribes procedural mode for taking cognizance of criminal contempt by the Supreme Court also. Section 15, however, is not a substantive provision conferring contempt jurisdiction. The judgment in *Sukhdev Singh Sodhi*, 1954 SCR 454, as regards the extent of "maximum punishment" which can be imposed upon a contemner must be construed as dealing with the powers of the High Courts only and not of the Supreme Court in that behalf. (Para 21)

Considering the materials placed before him, the inquiry officer has categorically recorded in his report that Zahira had changed her stands at different stages and has departed from statements made before the Supreme Court. So far as the question whether she was threatened, coerced, lured, induced and/or in any manner pressurised to make statements in a particular way by any person or persons, it has been found that Zahira has not been able to explain the assets in her possession in spite of several opportunities having been granted. The inquiry officer has referred to the explanations offered by Zahira and her family members and found that she could not explain various receipts of money received by her and deposits made in their bank accounts. The amount involved was nearly rupees five lakhs. The explanation offered by Zahira and her family members was found unacceptable. The inquiry officer inter alia recorded the finding that the fact which can be accepted as highly probable is that money has exchanged hands and that was the main inducement responsible which made Zahira to state in a particular way in the trial court, Vadodara although threat could have also played a role in reaching at an agreement. However, the element of threat could not be altogether ruled out. However, it was also found that even though materials did exist to show that money played a vital role in the change of stands yet it could not be directly linked to Madhu Srivastava and Bhattoo Srivastava (two of the accused). (Paras 6, 9 and 10)

Much has been made by Zahira about some observations made by the inquiry officer in his report. A bare reading of the observations makes it clear that what is being submitted by Zahira is by reading observations out of context. On a bare perusal of the proceedings of the enquiry it is clear that the procedure adopted was quite transparent. The proceedings were conducted in the presence of counsel for the parties and/or the parties themselves. After the questions were asked by the inquiry officer, the counsel and the parties were asked if any further questions were to be asked, and as the records reveal, whenever any question was suggested it was asked by the inquiry officer. It is alleged that scope for "cross-examination" was not given. That is really of no consequence. What questions in the "cross-examination" could have been put by counsel were asked by the inquiry officer whenever any suggestion was made in that regard. If a party did not suggest any question to be put to a witness by the inquiry officer, it is not open for him or her to say that the opportunity for "cross-examination" was not given. (Paras 14 and 15)

The statement of Zahira was recorded by NHRC in the presence of the Chairman (a retired Chief Justice of India) and several members, who included a retired Judge of the Supreme Court. The allegation that it was not properly recorded or that somebody else's statement was recorded and Zahira was asked to put the signatures, as she tried to make out, is clearly untenable. Such a plea should not have been raised as it reflects on the credibility of functionaries of a body like NHRC. (Para 15)

The other pleas taken by Zahira [enumerated in para 11 herein] do not in any way affect the credibility or acceptability of the inquiry officers' report. The allegation that the inquiry officer acted with some preconceived ideas and/or report was based on presumptions is not correct. The conclusions drawn by the inquiry officer have their foundation on materials which have been elaborately discussed by the inquiry officer. Much has been made of the fact that original affidavit was not filed. The reason for this has been explained, the inquiry officer has dealt with the question in detail and undisputedly the original affidavit has been brought on record. The stand that mere filing of a vakalatnama without an affidavit by the person concerned cannot constitute a statement by the person who has filed the vakalatnama is clearly unacceptable. The appeal against the order of the High

Court declining to accept the prayer for recording of additional evidence which lead to the judgment in *Zahira (1)*, (2004) 4 SCC 158, undisputedly had been filed by Zahira and it has been candidly admitted that she had filed the vakalatnama for filing the appeal. She cannot now turn around and say that she was not a party in that appeal. (Para 16)

Hence, in light of the above there is no reason to discard the report given by the inquiry officer which is accordingly accepted. (Para 17)

The complex pattern of life which is never static requires a fresher outlook and a timely and vigorous moulding of old precepts to some new conditions, ideas and ideals. If the court acts contrary to the role it is expected to play, it will be destruction of the fundamental edifice on which the justice delivery system stands. People for whose benefit the courts exist shall start doubting the efficacy of the system. Increasingly, people are believing that laws are like spiders' webs: if some light or powerless thing falls into them, it is caught, but a bigger one can break through and get away. (Paras 22 and 24)

Zahira's role in the whole case is an eye-opener for all concerned with the administration of criminal justice. The criminal justice system is likely to be affected if persons like Zahira are to be left unpunished. Not only the role of Zahira but also of others whose conduct and approach before the inquiry officer has been highlighted needs to be noted. The inquiry officer has found that Zahira could not explain her assets and the explanations given by her in respect of the sources of bank deposits, etc. have been found to be unacceptable. There is no reason to take a different view. Zahira has committed contempt of the Supreme Court. (Paras 18 and 20)

However it must be clarified that acceptance of the report in the present proceedings cannot have any determinative role in the re-trial of the *Best Bakery case* that is going on in the State of Maharashtra. (Para 18)

It is therefore directed that Zahira is sentenced to undergo simple imprisonment for one year and to pay costs of Rs 50,000, and in case of default of payment within two months, she shall suffer further imprisonment of one year. Her assets including bank deposits shall remain attached for a period of three months. The Income Tax Authorities are directed to initiate proceedings requiring her to explain the sources of acquisition of various assets and the expenses met by her during the period from 1-1-2002 till the date of this order. If so advised, the Income Tax Authorities shall also require Madhu Srivastava and Bhattoo Srivastava to explain as to why the claim as made in the VCD of paying money shall not be further enquired into, and if any tangible material comes to surface, appropriate action under the income tax law shall be taken notwithstanding the findings recorded by the inquiry officer that there is no acceptable material to show that they had paid money, as claimed, to Zahira. (Para 43). *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367: (2006) 2 KLT 350: 2006 Cri LJ 1694.

Bench Strength **2**. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 8-3-2006]

[87] — Arts. 129, 215, 142(2) and Sch. VII List I Entry 77 & List III Entry 14 — Contempt of Supreme Court and High Courts — Nature and extent of punishment that can be imposed by Supreme Court and High Courts, respectively, in respect of — Effect of Ss. 15 and 12, Contempt of Courts Act, 1971 — *Held, since no law in respect of said power of Supreme Court has been made under Sch. VII List I Entry 77, nature of punishment prescribed under 1971 Act may act as a guide for Supreme Court but extent of punishment prescribed thereunder can apply only to High Courts* — Sukhdev Singh Sodhi case, *1954 SCR 454, clarified in this regard — Contempt of Courts Act, 1971, Ss. 15 and 12*

Parliament by virtue of Entry 77 List I is competent to enact a law relating to the powers of the Supreme Court with regard to contempt of itself and such a law may prescribe the nature of punishment which may be imposed on a contemner by virtue of the provisions of Article 129 read with Article 142(2) of the Constitution. Since no such law has been enacted by Parliament, the nature of punishment prescribed under the Contempt of Courts Act, 1971 may act as a guide for the Supreme Court but the extent of punishment as prescribed under that Act can apply only to the High Courts, because the 1971 Act ipso facto does not deal with the contempt jurisdiction of the Supreme Court, except that Section 15 of the Act prescribes procedural mode for taking cognizance of criminal contempt by the Supreme Court also. Section 15, however, is not a substantive provision conferring contempt jurisdiction. The judgment in *Sukhdev Singh Sodhi*, 1954 SCR 454, as regards the extent of "maximum punishment" which can be imposed upon a contemner must be construed as dealing with the powers of the High Courts only and not of the Supreme Court in that behalf. (Para 21) . *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367: (2006) 2 KLT 350: 2006 Cri LJ 1694.

Bench Strength **2**. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 8-3-2006]

Sukhdev Singh Sodhi v. Chief Justice and Judges of the Pepsu High Court, 1954 SCR 454: AIR 1954 SC 186: 1954 Cri LJ 460, clarified

Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409, discussed

— Arts. 129 and 216 — Contempt by high government officials — Appropriate punishment *See* CONTEMPT OF COURT — 'Contempt of Courts Act, 1971', S. 12, (2006) 5 SCC 1

ARTICLE 136

— Art. 136 *See* Arts. 21, 226 and 136
See also Arts. 32, 136 and 137
See also Arts. 32, 136, 142, 144 and Preamble
See also Arts. 32, 226 and 136
See also Arts. 32, 226 & 136 and 245, 246 & 368
See also Arts. 142, 136 and 141

Synopsis

(a) Maintainability
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  (1) Final disposal
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(c) Scope of interference
  (1) General rule of non-interference
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    (i) Abatement of appeal
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  (4) Interference with concurrent findings of fact
  (5) Reappraisal of evidence
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(d) Effect of grant/dismissal of SLP
  (1) Dismissal of SLP without reasoning
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(e) Costs
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(a) Maintainability

(1) Early hearing by High Court

[88] — Arts. 136 and 226 — Petitioner seeking expedition in hearing of writ petition by High Court — When maintainable — *Held, not maintainable — Writ petition was filed before High Court in 2005 — Application for interim relief denied by High Court — Writ petitioner filing SLP in 2005, alleging that even though interim relief had been denied yet main petition was not being taken up for hearing — Held, High Court has to plan its own calendar and arrange priority in the matter of hearing cases — SLP cannot be entertained merely because there is some delay in hearing of a matter in High Court — Petitioner, however, was at liberty to move High Court to seek an early hearing. Lok Prahari* v. *State of U.P.*, (2005) 13 SCC 92.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and *Y.K. Sabharwal* and *G.P. Mathur*, JJ. [Date of decision: 1-9-2005]

(2) Pleadings/New Plea/Additional Plea/Alternative Plea

— Arts. 136 and 22(5) — New plea *See* PREVENTIVE DETENTION — 'Detention order' — Challenge to detention order, (2006) 11 SCC 339

(3) Preliminary objections

[89] — Art. 136 — Consideration of preliminary objections — Need for raising of pleading before Supreme Court and sufficient emphasis and stress to have been laid in arguments before courts below

There is nothing on record to indicate that the management (the State irrigation department) had argued the point in question. Though the point was taken as a plea before the Single Judge of the High Court there is nothing in the decision of the Single Judge as well as in the impugned judgment to show as to whether the management had argued on this aspect of the case and, therefore the Supreme Court is not inclined to await the decision of the larger Bench on the meaning and scope of "industry" in Section 2(*j*), ID Act, 1947, following the referral order in *Jai Bir Singh*, (2005) 5 SCC 1. Even in the counter-affidavit filed before the Supreme Court, no such plea has been taken. (Para 11). *R.M. Yellatti* v. *Asstt. Executive Engineer*, (2006) 1 SCC 106: 2006 SCC (L&S) 1: AIR 2006 SC 355: (2006) 1 LLN 7.

Bench Strength **3**. Coram: **S.H. Kapadia**, *S.N. Variava* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 7-11-2005]

(4) Questions of fact

[90] — Art. 136 — Concurrent findings of fact — Interference when warranted — Held, it is not number of times that a finding has been reiterated

(a) Maintainability - Questions of fact *(contd.)*

that matters — *What really matters is whether the finding is manifestly unreasonable and unjust in the context of evidence on record, in which case, Supreme Court will interfere* (Paras 22 and 23). *Ramlal* v. *Phagua*, (2006) 1 SCC 168: AIR 2006 SC 623.
Bench Strength **2**. Coram: *Arijit Pasayat* and **Dr. Ar. Lakshmanan**, JJ. [Date of decision: 19-10-2005]

Mohan Lal v. Nihal Singh, (2001) 8 SCC 584; Thiagarajan v. Sri Venugopalaswamy B. Koil, (2004) 5 SCC 762; Manikkoth Narayani Amma v. P.C. Kalliani Amma, (2003) 9 SCC 245; Makhan Lal v. Asharfi Lal, (1997) 9 SCC 604, distinguished

Indira Kaur v. Sheo Lal Kapoor, (1988) 2 SCC 488, explained and followed

— Art. 136 — Plea as to questions of fact directed to be raised before trial court *See* PRACTICE AND PROCEDURE — 'Question of fact', (2006) 4 SCC 278

(b) Exercise of power

(1) Final disposal

[91] — Art. 136 — Scope of appeal at stage of final disposal — Points at large — Enlarging scope of appeal at stage of final disposal — Permissibility — *Held, the same can be done by giving notice to respondent in respect of issues in respect of which scope of appeal has been enlarged, and giving him opportunity of being heard — However, on facts, due to amount of time that had elapsed, said course not adopted, though strongly warranted by the facts (that is, leave having been granted on question of back wages only, Supreme Court not enlarging appeal to question of reinstatement, though this was a fit case to have set aside reinstatement as well)* (Paras 6 and 7). *U.P. SRTC* v. *Mahendra Nath Tiwari*, (2006) 1 SCC 118: 2006 SCC (L&S) 61: AIR 2006 SC 405: (2006) 1 LLN 114: (2006) 1 All LJ 345: (2006) 1 SLR 536.
Bench Strength **2**. Coram: **P.K. Balasubramanyan** and *Ruma Pal*, JJ. [Date of decision: 11-11-2005]

(2) Power of judicial review

[92] — Art. 136 — Review of High Court's order — No grounds therefor made out by writ petitioners — Held, review impermissible

In this case, the writ petitioners wanted review of the High Court's order, which is clearly impermissible. No ground for seeking such review was apparently made out. (Para 42). *Union of India* v. *Ranbir Singh Rathaur*, (2006) 11 SCC 696.
Bench Strength **2**. Coram: **Arijit Pasayat** and *Tarun Chatterjee*, JJ. [Date of decision: 22-3-2006]

(3) Relief

[93] — Art. 136 — Delay incurred in proceedings — Appellant in custody for a long period — Relief — *Hence, High Court requested to dispose of the appeal as expeditiously as possible* (Para 6). *Satbir* v. *State of Haryana*, (2006) 9 SCC 234: (2006) 2 SCC (Cri) 553.
Bench Strength **2**. Coram: *B.P. Singh* and *S.H. Kapadia*, JJ. [Date of decision: 5-9-2005]

— Article 136 — Particular instances of exercise of power — Impugned order although erroneous, in the peculiar facts and circumstances of the case, interference therewith refused *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 149(2), 147, 3, 163-A, 166 and 170, (2006) 4 SCC 250

(4) Time-bound/Expeditious disposal

[94] — Arts. 136 and 226 — Relief — Time-bound/expeditious disposal (of writ petition) — When warranted — *Directions for, given in light of likely prejudice to appellants from delay in disposal thereof*

Keeping in view the fact that the appellants are out of business, the High Court is requested to consider the desirability of disposing of the writ petitions as expeditiously as possible and preferably within a period of two months from the date of communication of this order. The Chief Justice of the High Court, having regard to the importance of the question, may also consider the desirability of getting the matter heard out and disposed of by a Division Bench. (Para 52)

The appellants are entitled to costs throughout. Counsel fee is assessed at Rs 25,000 in each appeal. (Para 53). *Tashi Delek Gaming Solutions Ltd.* v. *State of Karnataka*, (2006) 1 SCC 442: AIR 2006 SC 661.
Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 8-12-2005]

(c) Scope of interference

(1) General rule of non-interference

[95] — Arts. 136 and 141 — Generally — Law, where it is clear, held, must be given effect to — *Plea to refrain from interfering with the impugned judgment as the parties were unaware of the law, rejected — Law enforcement — Knowledge of the law — Relevance — Maxims — Ignorentia juris non excusal* (Paras 11 and 12). *State of A.P.* v. *Twin City Jewellers Assn.*, (2005) 13 SCC 552: (2006) 147 STC 354.
Bench Strength **2**. Coram: *S.N. Variava* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 18-11-2004]

(2) Interference in criminal matters

Synopsis

(i) Abatement of appeal
(ii) Appeal against acquittal
(iii) Bail allowed
(iv) Bail denied
(v) Bail revoked
(vi) Interference in bail matters

(vii) Conviction
(viii) Quashing of criminal complaint
(ix) Reappreciation of evidence
(x) Sentence

(i) Abatement of appeal

— Art. 136 *See* CRIMINAL PROCEDURE CODE, 1973, S. 394, (2006) 5 SCC 683

(ii) Appeal against acquittal

[96] — Art. 136 — Appeal against acquittal — Locus standi of private party to file criminal appeal — Esher Singh case, *(2004) 11 SCC 585, reiterated, which highlights that the exercise of the power of the Supreme Court is not circumscribed by any limitation as to who may invoke it — Further highlighted that, where a judgment of acquittal by the High Court has led to a serious miscarriage of justice, the Supreme Court cannot refrain from doing its duty and abstain from interfering on the ground that a private party and not the State has invoked the Court's jurisdiction* (Paras 8 and 9). *Suga Ram* v. *State of Rajasthan*, (2006) 8 SCC 641: (2007) 1 SCC (Cri) 18: AIR 2006 SC 3258: 2006 Cri LJ 4643.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 18-9-2006]

(iii) Bail allowed

— Art. 136 — Bail pending appeal before High Court *See* CRIMINAL PROCEDURE CODE, 1973, S. 389, (2006) 9 SCC 602

(iv) Bail denied

[97] — Art. 136 — Bail — Entitlement to — Large economic scam in bank — *Huge amounts advanced to persons of dubious antecedents without taking steps to verify their creditworthiness in violation of applicable banking procedures and regulations — Accused-petitioner, a higher authority in that bank — Considering the facts and circumstances of the case, held, petitioner not entitled to be released on bail — Criminal Procedure Code, 1973, Ss. 439 & 437 — Penal Code, 1860, Ss. 405, 406, 408, 409, 420, 467, 468, 471 and 120-B — Banking Regulation Act, 1949, Ss. 18, 24 and 35-A* (Para 16). *Rameshchandra Nandlal Parikh* v. *State of Gujarat*, (2006) 1 SCC 732: (2006) 1 SCC (Cri) 481: AIR 2006 SC 915: (2006) 194 ELT 140: (2006) 2 Guj LR 1365: 2006 Cri LJ 964.

Bench Strength **2**. Coram: *Y.K. Sabharwal, C.J.* and **B.N. Srikrishna**, J. [Date of decision: 13-1-2006]

— Art. 136 — Conduct of accused in prison, and when on bail, when granted on earlier occasions — Relevance *See* 'Article 21' — Right to personal liberty, Arts. 21, 105 and 194, (2007) 1 SCC 70

[98] — Arts. 136 and 32 — Bail — Prosecution of people in power/Highly influential political personalities — Non-interference with denial of bail by High Court — *Petitioner (son of former Chief Minister of State of Chhattisgarh) accused of conspiracy to murder and being tried for the same in State of Chhattisgarh — Bail denied by High Court — Though Supreme Court refusing to interfere with denial of bail, permitting petitioner to visit his ailing father in Delhi accompanied by two responsible police officers — Same not be used as an excuse to disturb schedule fixed for trial by High Court — Public Accountability and Vigilance — Rule of law. Amit Jogi* v. *State of Chhattisgarh*, (2005) 13 SCC 688: (2006) 2 SCC (Cri) 292.

Bench Strength **2**. Coram: *Arijit Pasayat* and *S.H. Kapadia*, JJ. [Date of decision: 5-12-2005]

(v) Bail revoked

— Art. 136 — Grant of bail in double murder case without considering material facts on record and without assigning any reasons — Propriety of *See* CRIMINAL PROCEDURE CODE, 1973, S. 439, (2006) 9 SCC 785

— Art. 136 — Order granting bail — Quashing of, by Supreme Court *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 439 & 437, (2006) 9 SCC 425

(vi) Interference in bail matters

[99] — Art. 136 — Grant/Denial of bail — *Held, Court should not ordinarily, save in exceptional cases, interfere with High Court's order granting or refusing bail because the High Court should normally be the final arbiter in such matters* (Para 7). *Himanshu Chandravadan Desai* v. *State of Gujarat*, (2005) 13 SCC 234: (2006) 2 SCC (Cri) 143: AIR 2006 SC 179: 2006 Cri LJ 136: (2006) 101 Cut LT 385.

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 16-11-2005]

Bihar Legal Support Society v. Chief Justice of India, (1986) 4 SCC 767: 1986 SCC (Cri) 537, followed

(vii) Conviction

— Art. 136 — Alteration of conviction and sentence by High Court without any discussion of evidence — Propriety *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 386 and 374, (2005) 13 SCC 453

(viii) Quashing of criminal complaint

— Art. 136 — Quashing of criminal complaint by High Court where Magistrate issuing process without following the procedure and applying his mind — Validity of *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 482, 190 & 204, (2006) 9 SCC 601

(ix) Reappreciation of evidence

[100] — Art. 136 — Interference under — Reappreciation of evidence — Scope — *Held, Supreme Court will normally not enter into reappraisal or review of evidence unless the court below is shown to have committed an error of law or procedure and the conclusions arrived at are perverse —*

(c) Scope of interference - Interference in criminal matters - Sentence

Interference permissible, where on proved facts wrong inference of law is shown to have been drawn — In the present case, Supreme Court going through evidence on record in order to examine whether the findings recorded against appellants suffer from any infirmity (Para 7). *Radha Mohan Singh* v. *State of U.P.*, (2006) 2 SCC 450: (2006) 1 SCC (Cri) 661: AIR 2006 SC 951: (2006) 2 All LJ 242: 2006 Cri LJ 1121.

Bench Strength **3**. Coram: *K.G. Balakrishnan, Arun Kumar* and **G.P. Mathur**, JJ. [Date of decision: 20-1-2006]

(x) Sentence

— Art. 136 — Alteration of sentence to period already undergone i.e. 70 days — Relief of — Entitlement to — Forgery case *See* CRIMINAL TRIAL — 'Sentence' — Reduction of sentence, (2006) 7 SCC 414

— Art. 136 — Minimum punishment prescribed under law awarded — Interference with — Impermissibility of *See* CRIMINAL TRIAL — 'Sentence' — Minimum statutory sentence, (2006) 5 SCC 512

— Art. 136 — Rape after abduction — Reduction in sentence awarded by trial court and affirmed by High Court below statutory minimum — When warranted *See* PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Sentence, S. 376(1) and proviso thereto, (2006) 4 SCC 347

— Art. 136 — Reduction of sentence — Compromise in non-compoundable offence — Consideration of *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 320 and 354, (2006) 9 SCC 255

[101] — Art. 136 — Sentence — Reduction of — Offence under S. 304-A IPC — *Imposition of sentence of 1½ years — Incident took place 18 years back — Appellant suffering from serious ailment — He offering to pay Rs 15,000 as compensation to the heirs of the deceased — In such circumstances, held, it would be just and proper to reduce the sentence of appellant to six months — Penal Code, 1860, S. 304-A — Sentence — Reduction of, on offer to compensate heirs of deceased, and serious ailment of accused plus fact that incident took place 18 years back* (Paras 2 and 4). *Munni Kachhi* v. *State of M.P.*, (2005) 13 SCC 386: (2006) 2 SCC (Cri) 330.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *B.N. Srikrishna*, JJ. [Date of decision: 22-7-2005]

(3) Interference in family matters

— Art. 136 — Ordering of DNA tests *See* FAMILY LAW — 'Parentage', (2006) 9 SCC 363

(4) Interference with concurrent findings of fact

[102] — Art. 136 — Concurrent findings of fact — Interference with, when permissible

A concurrent finding of fact cannot be reopened in an appeal by special leave unless it is established: (*1*) that the finding is based on no evidence, or (2) that the finding is perverse, it being such as no reasonable person could have arrived at even if the evidence was taken at its face value, or (*3*) the finding is based and built on inadmissible evidence, which evidence, if excluded from vision, would negate the prosecution case or substantially discredit or impair it, or (*4*) some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded, or wrongly discarded. (Para 4)

On facts held, in absence of any such circumstances, interference was uncalled for. (Para 5). *Surender Singh* v. *State of Haryana*, (2006) 9 SCC 247: (2006) 2 SCC (Cri) 444.

Bench Strength **2**. Coram: **H.K. Sema** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 17-1-2006]

Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217: 1983 SCC (Cri) 728, followed

(5) Reappraisal of evidence

[103] — Art. 136 — Reappraisal of evidence — When warranted — *Where courts below considered the evidence and placed reliance thereon upon threadbare discussion, held, it was not possible to reappraise the evidence* (Para 3). *State of Rajasthan* v. *Fakir Mal*, (2005) 13 SCC 457: (2006) 2 SCC (Cri) 264.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 16-11-2005]

(6) Suo motu exercise of power

— Art. 136 — Suo motu exercise of power under Art. 136 where High Court directing not to arrest accused during pendency of trial on pain of paying monthly compensation to the victim *See* CRIMINAL PROCEDURE CODE, 1973, S. 482, (2005) 13 SCC 372

(d) Effect of grant/dismissal of SLP

(1) Dismissal of SLP without reasoning

[104] — Arts. 136 and 141 — Binding effect of dismissal of SLP in limine/without reasons dehors Art. 141 — Precedent on facts — Binding effect in cases involving similar/identical facts — Judicial discipline — *Held, though there is no merger of the impugned order with said order of Supreme Court dismissing SLP, in matters reagitating or raising questions identical/similar to the questions covered by the dismissed SLP, the party that had filed the dismissed SLP is not entitled to raise the said questions before a co-equal Bench of Supreme Court as such Bench is normally bound to respect its own earlier orders — Similarly, the High Court also cannot reconsider the questions after trial, once the said questions have been determined by Supreme Court by dismissal of SLP against an interim order of High Court* (Para 7). *Satrucharla Vijaya Rama Raju* v.

Nimmaka Jaya Raju, (2006) 1 SCC 212: AIR 2006 SC 543.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and *C.K. Thakker* and **P.K. Balasubramanyan**, JJ. [Date of decision: 27-10-2005]

(2) Grant of SLP

— Art. 136 — Effect of grant of leave — Special leave granted on quantum of sentence when minimum punishment prescribed under law awarded — Impropriety of *See* CRIMINAL TRIAL — 'Sentence' — Minimum statutory sentence, (2006) 5 SCC 512

(e) Costs

— Art. 136 *See* 'Article 136' — Scope of interference — General rule of non-interference, Arts. 136 and 141, (2005) 13 SCC 552

(f) Practice and procedure

(1) Appeals by prisoners

[105] — Art. 136 — Expeditious placing of SLP for first listing — Need for — *Record of case from courts below — Requisitioning of, prior to listing of SLP — Held, not to be obtained prior to placing of SLP for hearing in the normal course, to avoid delay — Applicability of Or. 21 R. 8, Supreme Court Rules, 1966 — Course to be followed by Registry of Supreme Court — Held, it is not reasonable that in each and every case the record has to be sent for — When SLPs are forwarded through officer in charge of the jail along with the certified copy of the judgment, the same should be urgently placed before the Court — It is only in cases where the record is required to be called for that the same should be done, as otherwise it may await the order of the Court — Supreme Court Rules, 1966, Or. 21 R. 8 — Applicability. Nathu* v. *State of Rajasthan*, (2006) 11 SCC 174: (2007) 1 SCC (Cri) 611.

Bench Strength **2**. Coram: *S.B. Sinha* and *Dalveer Bhandari*, JJ. [Date of decision: 31-10-2006]

(2) Cross-examination

[106] — Arts. 136 and 142 — Inquiry directed by Supreme Court — Procedure to be followed — *Scope for cross-examination — Criminal Procedure Code, 1973, S. 398 — Civil Procedure Code, 1908, Or. 26 Rr. 10 and 16 to 18 — Evidence Act, 1872, S. 137*

Zahira Habibullah Sheikh, who was projected as the star witness in the *Best Bakery case* made a grievance that she was intimidated, threatened and coerced to depart from the truth and to make a statement in the court which did not reflect the reality. The trial court on the basis of the statements made by the witnesses in the court directed acquittal of the accused persons. An application under Section 391, CrPC highlighting the necessity for accepting additional evidence was filed before the Gujarat High Court. The foundation was the statement made by Zahira. The High Court did not accept the prayer and that is why appeals came to be filed in the Supreme Court. By its judgment in *Zahira (1) case*, (2004) 4 SCC 158, the Supreme Court in the exceptional circumstances of the case directed re-trial of the case outside the State of Gujarat, in the State of Maharashtra. While the said re-trial was on before a court in Maharashtra pursuant to the Supreme Court's direction, Zahira gave a press statement in the presence of some government officials that what she had stated before the trial court in Gujarat earlier was correct. A petition was filed before the Supreme Court alleging that Zahira's statement was nothing but contempt of the Supreme Court. At a press conference held on 3-11-2004, a few days before the scheduled appearance of the witnesses in the said re-trial she disowned the statements made in the Supreme Court, and before various bodies like the National Human Rights Commission. While considering the said petition filed, by orders passed in *Zahira (3) case*, (2005) 4 SCC 292 and *Zahira (4) case*, (2005) 4 SCC 294, the Supreme Court inter alia directed the Registrar General of the Supreme Court to conduct an inquiry into the matter and submit a report to the Supreme Court within three months. The Registrar General inter alia was to indicate in the report (*a*) if Zahira Habibullah Sheikh was in any manner threatened, coerced, induced and/or in any manner pressurised to depose/make statement(s) in any particular way, by any person to persons, and (*b*) if the answer to (*a*) was in the affirmative, who the person/persons was (or) were. The Court further directed Zahira inter alia to file an affidavit indicating details and sources of her own and her family members' bank accounts, advances, other deposits, amounts invested in movable or immovable properties and advances or security deposits, along with the affidavit to be filed before the Registrar General of the Supreme Court.

Disposing of the applications in the terms below,

Held :

Much has been made by Zahira about some observations made by the inquiry officer in his report. A bare reading of the observations makes it clear that what is being submitted by Zahira is by reading observations out of context. On a bare perusal of the proceedings of the enquiry it is clear that the procedure adopted was quite transparent. The proceedings were conducted in the presence of counsel for the parties and/or the parties themselves. After the questions were asked by the inquiry officer, the counsel and the parties were asked if any further questions were to be asked, and as the records reveal, whenever any ques-

tion was suggested it was asked by the inquiry officer. It is alleged that scope for "cross-examination" was not given. That is really of no consequence. What questions in the "cross-examination" could have been put by counsel were asked by the inquiry officer whenever any suggestion was made in that regard. If a party did not suggest any question to be put to a witness by the inquiry officer, it is not open for him or her to say that the opportunity for "cross-examination" was not given. (Paras 14 and 15). *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367: (2006) 2 KLT 350: 2006 Cri LJ 1694.

Bench Strength **2**. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 8-3-2006]

— Art. 137 *See* Arts. 32, 136 and 137

ARTICLE 141

— Art. 141 *See* Arts. 136 and 141

See also Arts. 142, 136 and 141

See also Arts. 144 and 141

Synopsis

(a) Nature and Scope
(b) Binding effect of law declared by the Supreme Court
(c) Precedents
(d) Ratio decidendi
(e) Obiter
(f) Directions under Art. 142

(a) Nature and Scope

[107] — Art. 141 — Generally — Embodies doctrine of precedents as a matter of law (Para 11). *Mayuram Subramanian Srinivasan* v. *CBI*, (2006) 5 SCC 752: (2006) 3 SCC (Cri) 83: AIR 2006 SC 2449: 2006 Cri LJ 3285: (2006) 3 KLT 489.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 16-6-2006]

(b) Binding effect of law declared by the Supreme Court

[108] — Art. 141 — Declaration of law under — What is — *Held, if judgment is rendered merely having regard to the fact situation obtaining therein, the same could not be a declaration of law within the meaning of Art. 141* (Para 36). *U.P. State Brassware Corpn. Ltd.* v. *Uday Narain Pandey*, (2006) 1 SCC 479: 2006 SCC (L&S) 250: AIR 2006 SC 586: (2006) 1 SLR 11: (2006) 40 AIC 535 (SC): (2006) 108 FLR 201: (2006) 1 LLN 125.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 8-12-2005]

[109] — Art. 141 — What is binding — "Law declared by Supreme Court" — Interpretation of judgments — Principles for, discussed

An order of the Supreme Court must be construed having regard to the text and context in which the same was passed. For the said purpose, the orders of the Supreme Court are required to be read in their entirety. A judgment cannot be read as a statute. Construction of a judgment should be made in the light of the factual matrix involved therein. What is more important is to see the issues involved therein and the context wherein the observations were made. Any observation made in a judgment should not be read in isolation and out of context. (Para 312). *Bombay Dyeing & Mfg. Co. Ltd. (3)* v. *Bombay Environmental Action Group*, (2006) 3 SCC 434: AIR 2006 SC 1489.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 7-3-2006]

Bombay Dyeing & Mfg. Co. Ltd. v. Bombay Environmental Action Group, (2005) 5 SCC 61; NTC (IDA) Employees Assn. (2) v. Union of India, (2006) 3 SCC 604, clarified

[110] — Art. 141 — What is binding — Interpretation of judgments — *Held, courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed — Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases — Disposal of cases by placing blind reliance on a decision not proper*

The courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of the courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of the courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. (Paras 9 and 11). *Union of India* v. *Major Bahadur Singh*, (2006) 1 SCC 368: 2006 SCC (L&S) 959: (2006) 108 FLR 146: (2006) 1 LLN 56: (2006) 1 SLR 66.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 22-11-2005]

(c) Precedents

— **Art. 141** *See* PRECEDENTS — 'Generally', (2006) 5 SCC 167, 'Per incuriam decision', (2006) 5 SCC 752

[111] — Art. 141 — Binding precedent — Cardinality of following of — *Held, judicial discipline to abide by declaration of law by the Supreme Court cannot be forsaken under any pretext by any authority or court, be it even the highest court in a State, oblivious to Art. 141 of the Constitution* (Para 6). *Suga Ram* v. *State of Rajasthan*, (2006) 8 SCC 641: (2007) 1 SCC (Cri) 18: AIR 2006 SC 3258: 2006 Cri LJ 4643.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 18-9-2006]

(d) Ratio decidendi

[112] — Art. 141 — What is binding — "Law declared by Supreme Court" — Precedent — Only ratio decidendi is binding — *Held, a case is a precedent and binding for what it explicitly decides and no more — What is of essence in a decision is its ratio and not every observation found therein nor what logically flows from various observations made in the judgment — Further held, a decision is a precedent on its own facts — Reliance on the decision without looking into its factual background is clearly impermissible*

Reliance on the decision without looking into the factual background of the case before it, is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a judge while giving judgment that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (*i*) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the judge draws from the direct, or perceptible facts; (*ii*) statements of the principles of law applicable to the legal problems disclosed by the facts; and (*iii*) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein, nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. A case is a precedent and binding for what it explicitly decides and no more. (Para 12). *State of Orissa* v. *Mohd. Illiyas*, (2006) 1 SCC 275: 2006 SCC (L&S) 122: AIR 2006 SC 258.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Arun Kumar*, JJ. [Date of decision: 22-11-2005]

(e) Obiter

— **Art. 141 — Meaning and binding effect** *See* PRECEDENTS — 'Obiter', (2006) 5 SCC 167

(f) Directions under Art. 142

[113] — Arts. 141 and 142 — Directions issued under Art. 142 — Binding effect — *Held, such directions do not constitute a binding precedent*

Directions issued by the Supreme Court in exercise of its power under Article 142 of the Constitution do not constitute a binding precedent. (Para 69). *State of U.P.* v. *Neeraj Awasthi*, (2006) 1 SCC 667: 2006 SCC (L&S) 190: (2006) 2 All LJ 14: (2006) 1 SLR 774: (2006) 1 LLN 817.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 16-12-2005]

— **Art. 142** *See also* Arts. 32, 136, 142, 144 and Preamble

See also Arts. 32, 142 and 144

See also Arts. 136 and 142

See also Arts. 141 and 142

See CRIMINAL PROCEDURE CODE, 1973, Ss. 178(c) & 177 and 406, (2007) 1 SCC 262

[114] — Art. 142 — Directions passed in the interest of justice — Direction for CBI investigation and prompt disposal of pending proceedings — *Considering the delay in the disposal of the pending contempt petition (9 years) and registration of an FIR against a police officer, Supreme Court directing matter to be investigated by CBI within three months and directing the High Court to dispose of the contempt petition within three months — Criminal Procedure Code, 1973, S. 154 — Contempt of Court — Contempt of Courts Act, 1971, S. 2(b)* (Paras 6, 8, 9 and 10). *Ramesh Kumari* v. *State (NCT of Delhi)*, (2006) 2 SCC 677: (2006) 1 SCC (Cri) 678: AIR 2006 SC 1322: 2006 Cri LJ 1622: (2006) 127 DLT 636: (2006) 2 KLT 404.

Bench Strength **2**. Coram: **H.K. Sema** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 21-2-2006]

[115] — Art. 142 — Settlement — Mutual divorce — Quietus to proceedings — When warranted — *Petition filed by wife against respondent husband for transfer of case pending in Family Court, Pune to appropriate court at Jaipur — With the mediation of an advocate on the request of Supreme Court, parties arriving at a settlement of their dispute — Accordingly, a joint application under S. 13-B of Hindu Marriage Act filed — As per the settlement, respondent paid Rs 10 lakhs to petitioner — Having regard to facts and circumstances of the case, instead of rele-*

gating the parties to various proceedings between them, in exercise of power under Art. 142, the application under S. 13-B allowed and a decree for divorce on mutual consent of the parties on the terms stated in the application passed — Further proceedings arising out of the dispute between the parties quashed — Civil Procedure Code, 1908, S. 25 — Hindu Marriage Act, 1955, S. 13-B. Jimmy Sudarshan Purohit v. *Sudarshan Sharad Purohit*, (2005) 13 SCC 410.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *P.P. Naolekar*, JJ. [Date of decision: 6-12-2004]

[116] — Arts. 142, 136 and 141 — Judgment of Supreme Court — Interpretation of — Art. 142 — Scope of jurisdiction under — *Held, a judgment cannot be read as a statute — It may be construed with the assumption of having been rendered in accordance with law — In the present case State Administrative Tribunal's decision upholding the original gradation list and annulling the subsequent gradation list drawn up in terms of revised norms, becoming final — Supreme Court dismissing SLP thereagainst but granting liberty to approach the appropriate forum to assail any action of the Government based on any distinct cause of action — Liberty so granted, held, presumably meant liberty to assail any error committed in implementing the said order in individual cases — It could not be construed as liberty to reopen the question of the validity of the original gradation list, as Supreme Court could not have dispensed with the applicability of the principle of res judicata to the said decision of the Tribunal — Further held, the jurisdiction under Art. 142 cannot be exercised in violation of statutory provisions and that too at a distant time (about 14 years in this case) to unsettle a settled thing. Sarat Chandra Mishra* v. *State of Orissa*, (2006) 1 SCC 638: 2006 SCC (L&S) 182: AIR 2006 SC 861: (2006) 2 LLN 110: (2006) 101 Cut LT 678.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 3-1-2006]

[117] — Arts. 142 and 144 — Assistance of any authority sought by Supreme Court for doing complete justice in any cause — Nature of opinion given by such authority (CVC) in present case — *Public Accountability and Vigilance — Central Vigilance Commission Act, 2003, S. 8 — Nature of opinion given by CVC on its assistance being sought by Supreme Court for doing complete justice*

Under Article 142 of the Constitution, the Supreme Court is empowered to take aid and assistance of any authority for doing complete justice in any cause or matter pending before it. In the present case, at one stage of the matter, voluminous records were placed by CBI before the Supreme Court along with the recommendations of its officers. To vet and analyse the material, the Supreme Court essentially directed CVC to study the material, analyse the findings and give its recommendations as to the manner in which the investigations have been carried out. Since CVC has fairly stated before the Supreme Court that its advice is only in the nature of an opinion which is not a binding direction in this case, the Supreme Court is not required to examine the scope of the CVC Act, 2003. (Para 33). *M.C. Mehta (Taj Corridor Scam)* v. *Union of India*, (2007) 1 SCC 110: (2007) 1 SCC (Cri) 264.

Bench Strength **3**. Coram: **S.B. Sinha**[2], **S.H. Kapadia**[1] and *D.K. Jain*[1], JJ. [Date of decision: 27-11-2006]

[118] — Arts. 142 and 144 — Assistance of various authorities to do complete justice — Taj Corridor scam — *In light of voluminous records/reports submitted by CBI against the accused, the same directed to be placed before CVC for scrutiny and recommendation to Supreme Court — Public Accountability and Vigilance — Central Vigilance Commission Act, 2003, S. 8. M.C. Mehta* v. *Union of India*, (2007) 1 SCC 141: (2007) 1 SCC (Cri) 296.

Bench Strength **3**. Coram: *Ruma Pal*, *S.B. Sinha* and *S.H. Kapadia*, JJ. [Date of decision: 14-3-2005]

— Art. 142(2) *See* Arts. 129, 215, 142(2) and Sch. VII List I Entry 77 & List III Entry 14

— Art. 144 *See* Arts. 32, 136, 142, 144 and Preamble
See also Arts. 142 and 144

[119] — Arts. 144 and 141 — Binding effect of order of Supreme Court — High Court passing order in teeth of order of Supreme Court — Impermissibility — *Held, High Court order not sustainable and therefore set aside. Deepak Malik* v. *Rakesh Batra*, (2005) 13 SCC 113.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 2-9-2005]

— Art. 161 *See* Arts. 72 and 161

[120] — Arts. 161 and 72 — Clemency petition — Requirements of — Need to disclose all relevant details — Pendency of other criminal cases against convict — Need to disclose — *Held (per curiam), this certainly is a serious matter because a person who seeks exercise of a highly discretionary power of a high constitutional authority, has to show bona fides and must place materials with clean hands*

In the clemency petition filed by Respondent 3 there is no mention about pendency of Criminal Case No. 411 of 2000 against Respondent 2. Respondent 1 State submitted that though this fact was not mentioned by Respondent 3 in the petition yet the State Government considered the effect of the pendency of that petition. This certainly is a serious matter because a person who seeks exercise of a highly discretionary

power of a high constitutional authority, has to show bona fides and must place materials with clean hands. (Para 58). *Epuru Sudhakar* v. *Govt. of A.P.*, (2006) 8 SCC 161: (2006) 3 SCC (Cri) 438: AIR 2006 SC 3385.

Bench Strength 2. Coram: **Arijit Pasayat**[1] and **S.H. Kapadia**[2], JJ. [Date of decision: 11-10-2006]

[121] — Arts. 161 and 72 — Grant of pardon or remission, etc. of sentences — Scope of power — Judicial review of — Grounds on which available, enumerated — Political party affiliation of convict in question — Relevance — *Held (per curiam), political party affiliation is an irrelevant ground — Reports of district-level officials recommending remission of sentence of Respondent 2 convict (sentenced to 10 years' RI by Supreme Court) on basis of which remission granted by Governor, inter alia proceeded principally on three main considerations: that Respondent 2 convict (1) was falsely implicated and false witnesses were produced, (2) was maintaining a cordial relationship with family of deceased, and (3) was a "good Congress worker" — Further, the clemency petition had been filed by wife of Respondent 2 convict, as a sitting MLA of party in power in the State — Sustainability of remission order — Held (per Pasayat, J.), considerations (1) and (2) were false given that this petition was filed by the sons of the persons murdered by Respondent 2 convict and he had been convicted under S. 304(1) by Supreme Court — Question of his being a "good Congress worker" had no relevance as to whether pardon/remission was to be granted — Non-independent inquiry into facts by Collector and volte-face by Police Superintendent on change in party in power, strongly deprecated — With such a pliable bureaucracy, there is need for deeper scrutiny when power of pardon/remission is exercised — Held (per Kapadia, J.), considerations of religion, caste or political loyalty are irrelevant and fraught with discrimination — These are prohibited grounds — Executive clemency power has to be exercised on public considerations alone, and it is to be weighed whether public welfare will be better served by inflicting less than what the judgment has fixed — Clemency power is not only for benefit of convict — President or Governor has to keep in mind family of victims, society as a whole and the precedent it sets for the future — Primacy of rule of law and "Government according to law", that is, exercise of executive power based on fairness and certainty, emphasised — Remission order quashed and remanded to Governor for decision afresh on basis of relevant material/considerations — Rule of Law*

Challenge in this writ petition under Article 32 of the Constitution was to the order passed by the Government of Andhra Pradesh whereby Respondent 2 was granted remission of the unexpired period of about seven years' imprisonment.

The petitioners were the sons of persons murdered/allegedly by Respondent 2 who faced trial and ultimately the matter came before the Supreme Court and by *Goura Venkata Reddy*, (2003) 12 SCC 469, his conviction was altered from one under Section 302 IPC to Section 304(1) r/w Section 109 IPC and a custodial sentence of 10 years' rigorous imprisonment was imposed.

Respondent 3, wife of Respondent 2 was elected as member of the Andhra Pradesh Legislative Assembly on 12-5-2004. On 10-10-2004, Respondent 3 made a representation to Respondent 1 seeking pardon to Respondent 2 by exercise of power under Article 161 of the Constitution alleging that he was implicated in false cases due to political rivalry. On 11-8-2005 the Governor of Andhra Pradesh purportedly exercising power under Article 161 of the Constitution granted remission of the unexpired sentence of Respondent 2 who was accordingly released from prison.

The writ petition was filed inter alia alleging that the grant of remission (described in the writ petition as grant of pardon) was illegal, that relevant materials were not placed before the Governor, and the impugned order was passed without application of mind. The recommendations made for grant of remission were based on irrelevant and extraneous materials. The factual scenario had not been placed before the Governor in the proper perspective. The sole basis on which Respondent 3 asked for pardon was alleged implication in false cases due to political rivalry. In view of the Supreme Court's judgment holding Respondent 2 guilty, the said plea could not have even been considered as a basis for grant of pardon. Since the grant of pardon is based on consideration of irrelevant materials and non-consideration of relevant materials, the same was liable to be set aside.

Learned amicus curiae highlighted various aspects relating to the grant of pardon and remission, as the case may be, and the scope for judicial review in such matters. He suggested that considering the frequency with which pardons and/or remissions were being granted, in the present political scenario of the country it would be appropriate for the Supreme Court to lay down guidelines so that there was no scope for making a grievance about the alleged misuse of such power.

Allowing the writ petitions to the extent below,

Held :

Per Pasayat, J.

The function of determining whether the act of a constitutional or statutory functionary falls within the constitutional or legislative conferment of power, or is vitiated by self-denial on an erroneous appreciation of the full amplitude of the power, is a matter for the court. (Para 25)

The exercise or non-exercise of pardon power by the President or Governor, as the case may be, is not immune from judicial review. Limited judicial review is available in certain cases. (Para 22)

The position is undeniable that judicial review of the order of the President or the Governor under Article 72 or Article 161, as the case may be, is available and their orders can be impugned on the following grounds:

(*a*) that the order has been passed without application of mind;

(*b*) that the order is mala fide;

(*c*) that the order has been passed on extraneous or wholly irrelevant considerations;

(*d*) that relevant materials have been kept out of consideration;

(*e*) that the order suffers from arbitrariness. (Para 34)

The observation in *Kehar Singh case*, (1989) 1 SCC 204 at p. 216, para 13 that, "[t]here is also no question involved in this case of asking for the reasons for the President's order" obviously means that the affected party need not be given the reasons. The question whether reasons can or cannot be disclosed to the court when the same is challenged was not the subject-matter of consideration in *Kehar Singh case*. In any event, the absence of any obligation to convey the reasons does not mean that there should not be legitimate or relevant reasons for passing the order. Since there is a power of judicial review, however, limited it may be, the same can be rendered to be an exercise in futility in the absence of reasons. (Paras 37, 38 and 43)

If it comes to the knowledge of the Government that the pardon has been obtained on the basis of a manifest mistake or patent misrepresentation or fraud, the same can be rescinded or cancelled. (Paras 45 and 50)

In the present case it is noticed that various materials were placed before the Governor when the request for grant of pardon/remission was processed at various levels. The views of the district-level officials were obtained. Since they formed the basis of impugned order, it is relevant to take note of some interesting features. The three district-level officials were the Superintendent of Police, the District Collector, Kurnool and the District Probation Officer. Apart from that, the views of the Superintendent of Jail, Central Prison, Cherlapally were obtained. According to the State it was sufficient for the Collector to have acted on the reports of the Superintendent of Police and the Revenue Divisional Officer. The plea is clearly unacceptable. The Collector does not appear to have made any independent enquiry on his own. (Para 55)

The report of the District Probation Officer is very interesting. In his report he has stated that if he (Respondent 2) is prematurely released his life would be safe because his wife is a sitting MLA and she is having a police security. Further he was having a stronghold in the village and there is no opposition in Bramhanakotkur village. A portion of his report shows as to how extraneous materials which had no relevance formed the foundation of his report. Apart from the apparently wrong statement made that Respondent 2 was maintaining cordial relationship with the family members of the deceased, the District Probation Officer has highlighted that he was a "good Congress worker". Further there is an inference that he was not involved in the murder, was falsely implicated and false witnesses were produced. This inference in the face of the Supreme Court's judgment in *Goura Venkata Reddy*, (2003) 12 SCC 469 convicting Respondent 2 inter alia under Section 304 Part I, is utterly fallacious. The question of his being a "good Congress worker" has no relevance to the object sought to be achieved i.e. consideration of the question whether pardon/remission was to be granted. Equally surprising is the statement to the effect that during enquiry it was revealed that the convict is a Congress worker and by political conspiracy he was defeated in the elections conducted earlier. (Paras 55 and 56)

The report of the Superintendent of Police is equally interesting. He has stated that there will be no reaction in Bramhanakotkur village and Nandikotkur town if the prisoner is released prematurely. The report is dated 6-12-2004. Before the elections, the same officer had reported that on account of Respondent 2's release on parole, there was likelihood of breach of peace and law and order if he visits Nandikotkur assembly constituency. The only reason why a pariah becomes a messiah appears to be the change in the ruling pattern. With such a pliable bureaucracy there is need for deeper scrutiny when power of pardon/remission is exercised. (Para 57)

Further, in the clemency petition filed by Respondent 3 there is no mention about pendency of Criminal Case No. 411 of 2000 against Respondent 2. Respondent 1 State submitted that though this fact was not

mentioned by Respondent 3 in the petition yet the State Government considered the effect of the pendency of that petition. This certainly is a serious matter because a person who seeks exercise of a highly discretionary power of a high constitutional authority, has to show bona fides and must place materials with clean hands. (Para 58)

When the principles of law as noted above are considered in the factual background it is clear that irrelevant and extraneous materials entered into the decision-making process, thereby vitiating it. (Para 59)

The order granting remission which is impugned in the petitions is clearly unsustainable and is set aside. However, it is open to Respondent 1 to treat the petition as a pending one for the purpose of reconsideration. It shall be open to the Governor to take note of materials placed before him by the functionaries of the State, and also to make such enquiries as considered necessary and relevant for the purpose of ascertaining the relevant factors otherwise. (Para 60)

Per S.H. Kapadia, J. (concurring)

Granting of pardon is in no sense an overturning of a judgment of conviction, but rather it is an executive action that mitigates or sets aside the punishment for a crime. It eliminates the effect of conviction without addressing the defendant's guilt or innocence. (Para 66)

Pardons, reprieves and remissions are manifestation of the exercise of prerogative power. These are not acts of grace. They are a part of constitutional scheme. When a pardon is granted, it is the determination of the ultimate authority that public welfare will be better served by inflicting less than what the judgment has fixed. (Para 62)

Exercise of executive clemency is a matter of discretion and yet subject to certain standards. It is not a matter of privilege. It is a matter of performance of official duty. It is vested in the President or the Governor, as the case may be, not for the benefit of the convict only, but for the welfare of the people who may insist on the performance of the duty. This discretion, therefore, has to be exercised on public considerations alone. The President and the Governor are the sole judges of the sufficiency of facts and of the appropriateness of granting the pardons and reprieves. However, this power is an enumerated power in the Constitution and its limitations, if any, must be found in the Constitution itself. Therefore, the principle of exclusive cognizance would not apply when and if the decision impugned is in derogation of a constitutional provision. This is the basic working test to be applied while granting pardons, reprieves, remissions and commutations. (Para 65)

An undue exercise of this power is to be deplored. Considerations of religion, caste or political loyalty are irrelevant and fraught with discrimination. These are prohibited grounds. (Para 66)

The rule of law is the basis for evaluation of all decisions. The supreme quality of the rule of law is fairness and legal certainty. The principle of legality occupies a central plan in the rule of law. Every prerogative has to be subject to the rule of law. That rule cannot be compromised on the grounds of political expediency. To go by such considerations would be subversive of the fundamental principles of the rule of law and it would amount to setting a dangerous precedent. The rule of law principle comprises a requirement of "Government according to law". The ethos of "Government according to law" requires the prerogative to be exercised in a manner which is consistent with the basic principle of fairness and certainty. Therefore, the power of executive clemency is not only for the benefit of the convict, but while exercising such a power the President or the Governor, as the case may be, has to keep in mind the effect of his decision on the family of the victims, the society as a whole and the precedent it sets for the future. (Para 66)

The constitutional justification for judicial review, and the vindication of the rule of law remain constant in all areas, but the mechanism for giving effect to that justification varies. (Para 68)

There is a clear symmetry between the constitutional rationale for review of statutory and prerogative power. In each case, the courts have to ensure that the authority is used in a manner which is consistent with the rule of law, which is the fundamental principle of good administration. In each case, the rule of law should be the overarching constitutional justification for judicial review. The exercise of prerogative power cannot be placed in straitjacket formula and the perceptions regarding the extent and amplitude of this power are bound to vary. However, when the impugned decision does not indicate any data or manageable standards, the decision amounts to derogation of an important constitutional principle of rule of law. (Para 69)

The controlling factor in determining whether the exercise of prerogative power is subject to judicial review is not its source but its subject-matter. It can no longer be said that prerogative power is *ipso facto* immune from judicial review. (Para 66)

The power under Article 72 as also under Article 161 of the Constitution is of the widest amplitude and envisages myriad kinds and categories of cases with facts and situations varying from case to case. The exercise of power depends upon the facts and circum-

stances of each case and the necessity or justification for exercise of that power has to be judged from case to case. It is important to bear in mind that every aspect of the exercise of the power under Article 72 as also under Article 161 does not fall in the judicial domain. In certain cases, a particular aspect may not be justiciable. However, even in such cases there has to exist requisite material on the basis of which the power is exercised under Article 72 or under Article 161 of the Constitution, as the case may be. In the circumstances, one cannot draw the guidelines for regulating the exercise of the power. (Para 67)

Exercise or non-exercise of the power of pardon by the President or the Governor is not immune from judicial review. Though, the circumstances and the criteria to guide exercise of this power may be infinite, one principle is definite and admits of no doubt, namely, that the impugned decision must indicate exercise of the power by application of manageable standards and in such cases courts will not interfere in its supervisory jurisdiction. By manageable standards we mean standards expected in functioning democracy. A pardon obtained by fraud or granted by mistake or granted for improper reasons would invite judicial review. The prerogative power is the flexible power and its exercise can and should be adapted to meet the circumstances of the particular case. (Para 68). *Epuru Sudhakar* v. *Govt. of A.P.*, (2006) 8 SCC 161: (2006) 3 SCC (Cri) 438: AIR 2006 SC 3385.

Bench Strength **2**. Coram: **Arijit Pasayat**[1] and **S.H. Kapadia**[2], JJ. [Date of decision: 11-10-2006]

Swaran Singh v. State of U.P., (1998) 4 SCC 75: 1998 SCC (Cri) 804, followed

R. v. Secy. of State for the Home Deptt., ex p Bentley, (1993) 4 All ER 442 (QBD); Burt v. Governor General, (1992) 3 NZLR 672; Mohd. Sharif v. Federation of Pakistan, PLD 1988 Lah 725, approved

[**Ed.**: For written submissions of the *Amicus* Mr Soli Sorabjee, Senior Advocate, *see* http://www.ebc-indzxia.com]

[122] — Art. 166 — Government notification — Letter rescinding the notification by which operation of Delhi Special Police Establishment Act, 1946 had been extended to the State — *Person authorised to take the decision to rescind not established — Authority to write the letter not indicated — Letter alleged to be only an interdepartmental communication — Held, letter did not meet the requirements of Art. 166 and is not a notification*

As regards the stands taken by the respondent, there was no notification revoking the earlier notification. The letter on which great emphasis has been laid by Respondent 1 and highlighted by the High Court, the authority to write the letter has not been indicated. It has also not been established that the person was authorised to take a decision. In any event, the same does not meet the requirements of Article 166 of the Constitution. The letter is not even conceptually a notification. The High Court was, therefore, not justified in holding that there was a notification rescinding the earlier notification. (Para 13). *CBI* v. *Ravi Shankar Srivastava*, (2006) 7 SCC 188: (2006) 3 SCC (Cri) 233: AIR 2006 SC 2872.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 10-8-2006]

— **Art. 194** *See* Arts. 21, 105 and 194

[123] — Arts. 213(1), 123(1), 32 and 226 — Nature and scope of power under Art. 213(1) — Scope of judicial review — *Matter referred to a seven-Judge Bench — Education — Bihar Non-Government Sanskrit Schools (Taking Over and Control) Ordinance (32 of 1989), (7 of 1990) and (21 of 1990) — Validity of. Krishna Kumar Singh* v. *State of Bihar*, (2005) 13 SCC 375: (2006) 2 SCC (Cri) 248.

Bench Strength **5**. Coram: *R.C. Lahoti, C.J.* and *Shivaraj V. Patil, K.G. Balakrishnan, B.N. Srikrishna* and *G.P. Mathur*, JJ. [Date of decision: 23-11-2004]

[**Ed.**: Headnote made with the kind assistance of Mr Gaurav Bhatia, Advocate, Supreme Court, who is one of the assisting counsel in this matter.]

— **Art. 214** *See* Arts. 124 and 214

— **Art. 215** *See* Arts. 129 and 215

See also Arts. 129, 215, 142(2) and Sch. VII List I Entry 77 & List III Entry 14

— **Art. 215 — Contempt proceedings — Scope of** *See* CONTEMPT OF COURT — 'Contempt of Courts Act, 1971', Ss. 10 and 11, (2006) 5 SCC 399

— **Arts. 215 and 129** *See* CONTEMPT OF COURT — 'Civil contempt' — General principles, (2006) 1 SCC 613

— **Arts. 215 and 136** *See* CONTEMPT OF COURT — 'Contempt of Courts Act, 1971', Ss. 19, 10 & 11, (2006) 5 SCC 399

— **Art. 216** *See* Arts. 129 and 216

ARTICLE 226

— **Art. 226** *See* Arts. 21, 32, 226 and 300
See also Arts. 32, 226, 21 and 300
See also Arts. 32, 226 and 136
See also Arts. 32, 226 & 136 and 245, 246 & 368
See also Arts. 136 and 226
See also Arts. 213(1), 123(1), 32 and 226
See also Arts. 227 and 226

Synopsis

(a) Nature and Scope
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(a) Nature and Scope

Jurisdiction of High Court

[124] — Art. 226 — Jurisdiction of High Court — Invocation of — Arising of "cause of action" within the territorial limits of the High Court — Requirement of — *Held, the High Court will have jurisdiction if cause of action wholly or in part arises within the territorial limits of its jurisdiction even though the seat of Govt. or authority or residence of person against whom the direction, order or writ is sought to be issued is not within the said territory — Writ petitioner has to establish that a legal right claimed by him has prima facie been infringed or is threatened to be infringed by respondent within the territorial limits of the High Court's jurisdiction — Such infringement may take place by causing him actual injury or threat thereof — In the present case, High Court refusing to consider writ petition by merely observing that though it may have jurisdiction but another High Court could deal with the matter more effectively — High Court not holding that no part of the cause of action arose within its territorial jurisdiction — Hence held, it was not a correct way to deal with the writ petition — Matter remitted to High Court for fresh hearing on merits*

The appellant filed a writ petition before the Delhi High Court. The said High Court refused to consider that writ petition by holding that though it may have jurisdiction to deal with grievances of the appellant but these could be more effectively dealt with by the Allahabad High Court. Hence, the present appeal.

Disposing of the appeal,

Held :

Two clauses of Article 226 of the Constitution on plain reading give clear indication that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action wholly or in part had arisen within the territories in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. (Para 8)

The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226. In order to maintain a writ petition a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof. (Para 7)

The Delhi High Court has not dealt with the question as to whether it had jurisdiction to deal with the writ petition. It only observed that it may have jurisdiction, but the issues relating to conditions of prisoners in the State of U.P. can be more effectively dealt with by the Allahabad High Court. It was open to the Delhi High Court to say that no part of the cause of action arose within the territorial jurisdiction of the Delhi High Court. The High Court in the impugned order does not say so. On the contrary, it says that jurisdiction may be there, but the Allahabad High Court can deal with the matter more effectively. That is certainly not a correct way to deal with the writ petition. Accordingly, the impugned order of the High Court is set aside and the matter is remitted to it for fresh hearing on merits. (Para 18). *Om Prakash Srivastava* v. *Union of India*, (2006) 6 SCC 207: (2006) 3 SCC (Cri) 24: (2006) 131 DLT 557.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 24-7-2006]

— Art. 226 — "Territories within which the cause of action, wholly or in part, arises" — Expression "cause of action" — Meaning — Question whether the cause of action in the subsequent suit is identical with that in the first suit — Mode of determination *See* WORDS AND PHRASES, (2006) 6 SCC 207

(b) Maintainability

(1) Alternative remedy/exhaustion of remedies

— Art. 226 — Notices for initiation of adjudication proceedings under FERA, 1973 — Writ of prohibition against — Maintainability *See* FOREIGN EXCHANGE REGULATION ACT, 1973, Ss. 50, 51, 52 and 54, (2006) 4 SCC 278

— Art. 226 — Notices issued in terms of S. 61, FERA, 1973 — Writ of prohibition against — Maintainability *See* FOREIGN EXCHANGE REGULATION ACT, 1973, S. 61, (2006) 4 SCC 278

— Arts. 226 and 227 — Bypassing of statutory remedy — Enlargement of statutorily restricted grounds of appeal by filing writ petition — Impermissibility *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 173, 170 and 149(2), (2006) 3 SCC 242

(2) Questions of fact

[125] — Art. 226 — Disputed question of fact — When arises — *Where factual issues ex facie appear to be controversial, writ petition may be dismissed in limine — But usually dispute appears after respon-*

dent puts forth his version — When writ petitioners' case was based on a clause of a settlement which the respondents pleaded to be vitiated by fraud and High Court refused to test the allegations made by respondents, on the ground that it would amount to entertaining a separate cause of action, held, High Court's conclusion erroneous, it being based on a confusion between onus of proof, which lay on respondents, and cause of action (Para 34). Air India Ltd. v. *Vishal Capoor*, (2005) 13 SCC 42: 2006 SCC (L&S) 1041: (2005) 4 LLN 304: (2005) 6 SLR 63: (2005) 107 FLR 855: (2005) 3 LLJ 1029.

Bench Strength **3**. Coram: **Ruma Pal**, *Dr. Ar. Lakshmanan* and *C.K. Thakker*, JJ. [Date of decision: 28-9-2005]

(c) Exercise of power

(1) Generally

— Arts. 226 and 32 — Writ petition — Maintainability of, where no action taken by police despite getting information regarding commission of cognizable offence *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 154, 156, 190 and 200 to 203, (2006) 4 SCC 359

(2) Power of judicial review

[126] — Art. 226 — Review — Scope of power under Art. 226 — *Held, High Court's power of review of its own order inheres in the High Court, having plenary jurisdiction to prevent miscarriage of justice — Review petition filed by appellant against order of High Court allowing writ petition and dismissing petition of appellant before CAT in which appellant had succeeded — CAT had ordered regularisation of service of appellant teacher from the date of joining and also grant of senior scale — Review petition dismissed by High Court — Several important issues left out and materials on record ignored by High Court — Held, on facts, High Court not justified in dismissing the review petition — High Court's order suffers from error apparent on the face of record and non-consideration of relevant documents — If claim of appellant is not accepted appellant will suffer immeasurable loss and injury* (Paras 15 and 16). *Rajender Singh* v. *Lt. Governor, Andaman & Nicobar Islands*, (2005) 13 SCC 289: 2006 SCC (L&S) 1057: AIR 2006 SC 75: (2005) 6 SLR 1: (2005) 3 CLR 863.

Bench Strength **2**. Coram: *Ruma Pal* and **Dr. Ar. Lakshmanan**, JJ. [Date of decision: 4-10-2005]

— Art. 226 — Scope of judicial review by High Court *See* ADMINISTRATIVE LAW — 'Judicial review' — Grounds for Judicial review — Exercise of power/Discretionary power, (2006) 8 SCC 200

(3) Relief

[127] — Art. 226 — Proper course of relief — Disputed questions of fact arising — Proper course to be followed by High Court — *Held, High Court should have relegated writ petitioners to appropriate court, and not have dismissed the writ petition. Mansarover Steel Industries (P) Ltd.* v. *State of U.P.*, (2005) 13 SCC 440.

Bench Strength **2**. Coram: *S.N. Variava* and *Tarun Chatterjee*, JJ. [Date of decision: 30-9-2005]

(d) Scope of interference

Interference in criminal matters

[128] — Art. 226 — Investigation — Direction by High Court to register case and conduct investigation in offence which took place about 18 years ago — Challenge to, by aggrieved appellant — Sustainability — *Writ petition filed in 2004 by Respondent 3 seeking direction for registration of case against appellant in respect of case relating to year 1986 in which Respondent 3 was attacked and had suffered injuries — Impugned direction based on enquiry report of Dy. Inspector General, CID who conducted enquiry at the instance of High Court — Considering the peculiar facts and circumstances of the case, held, judgment of High Court not liable to be interfered with — Hence, upheld — Criminal Procedure Code, 1973, Ss. 154 and 156*

A writ petition was filed by Respondent 3 before the High Court alleging inaction on the part of the police authorities in not registering his complaint and taking action against the persons who had caused injuries to him and his sons in an incident occurring on 8-11-1986. The Single Judge of the High Court directed the Director General of Police (DGP) to appoint a senior police officer to conduct an enquiry into the matter. Pursuant to that order, the Dy. Inspector General, CID conducted the enquiry and submitted a report. The Single Judge held that once it was established that Respondent 3 had sustained injuries in the incident and injuries on his person were confirmed in the medical examination, the police authorities ought to have registered a case and taken appropriate steps in accordance with law. On the basis of the final report of the inquiry, the Single Judge directed the Superintendent of Police to register a case in the police station of competent jurisdiction and take action in accordance with law. The application filed by the appellant for recalling the said order was dismissed. Hence, the present appeal.

As per the appellant, he was tenant in the house of Respondent 3. Respondent 3 attempted to illegally evict the appellant from his rented house with the help of antisocial elements who came to his house armed with weapons on 8-11-1986. Respondent 3 along with his men started dismantling the house of the appellant without prior permission and/or notice to him. The appellant was seriously injured when he tried to

obstruct them from dismantling the house. The appellant lodged a first information report under Sections 147/307 IPC against Respondent 3 and his men. Later, the said criminal case was withdrawn by the Public Prosecutor. The revision filed before the High Court against the said withdrawal was dismissed.

Before the Supreme Court the appellant contended that the High Court ought not to have passed any direction in the writ petition filed by Respondent 3 because it was filed after undue delay. The appellant was also aggrieved by the order of withdrawal of the prosecution against Respondent 3.

Dismissing the appeal,

Held :

The order of the High Court was primarily based on the report of the DIG, CID, Gwalior who had conducted the inquiry at the instance of the Court and submitted the report. On the basis of the inquiry report, the High Court directed the Superintendent of Police, Gwalior to take action for registration of the case and conduct the investigation and inquiry in accordance with law. (Para 21)

The impugned judgment of the High Court has been carefully examined. There is no infirmity therein. In the backdrop of the peculiar facts and circumstances of the case, no interference is called for. (Paras 22 and 23). *Ghanshyam* v. *State of M.P.*, (2006) 10 SCC 473: (2006) 3 SCC (Cri) 602.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

(e) Particular writs

Prohibition

— Art. 226 — Writ of prohibition — Issuance of — Notices issued to petitioner under FERA, 1973 for initiating proceedings of adjudication and prosecution under — Refusal to issue writ of prohibition against — Propriety *See* FOREIGN EXCHANGE REGULATION ACT, 1973, Ss. 50, 51, 61, 56 & 68, (2006) 4 SCC 278

[129] — Art. 226 — Writ of prohibition to prevent a tribunal or authority from proceeding further — Issuance of — Conditions for

A writ of prohibition will issue to prevent a tribunal or authority from proceeding further when the authority proceeds to act without or in excess of jurisdiction; proceeds to act in violation of the rules of natural justice; or proceeds to act under a law which is itself ultra vires or unconstitutional. (Para 25)

The prayer for the issue of a writ of prohibition restraining the authorities under FERA from proceeding with the adjudication and the prosecution is essentially based on the constitutional challenge to the relevant provisions of FERA, 1973 on the ground that they violate Articles 14 and 21 of the Constitution. Once it is held that the provisions are constitutional, the basis on which the writ of prohibition is sought for by the appellants disappears. Therefore, the High Court rightly refused the prayer for the issue of the said writ. Further, on the facts of this case, it cannot be said that the notices issued are palpably without authority of law. In that situation, the appellants cannot successfully challenge the refusal by the High Court of the writ of prohibition prayed for by them. (Para 25) . *Standard Chartered Bank* v. *Directorate of Enforcement*, (2006) 4 SCC 278: (2006) 2 SCC (Cri) 221: AIR 2006 SC 1301: (2006) 127 DLT 747: (2006) 197 ELT 18.

Bench Strength **3**. Coram: *Y.K. Sabharwal, C.J.* and *C.K. Thakker* and **P.K. Balasubramanyan**, JJ. [Date of decision: 24-2-2006]

(f) Practice and Procedure

[130] — Art. 226 — Procedure to be followed under Art. 226 — Generally — Disposal of case by placing reliance on an earlier decision — Mode of *— Case-law to the effect that in such circumstances the court must indicate as to how the case relied on was applicable to the facts of the case the court was seized of, restated — In the present case, High Court having followed an earlier decision rendered by it without discussing as to how that decision had any similarity to the facts of the present case, matter remitted to it for a fresh decision*

The respondent herein filed a writ petition before the High Court. Noting that the said writ petitioner had sought the matter to be disposed of by the State keeping in mind the specified earlier order of the High Court, the High Court directed the State to complete the exercise within the time-limit specified. The State then filed the present appeal by special leave.

Attempting to distinguish the facts of the case specified by the High Court from the facts of the present case, the appellant State submitted before the Supreme Court that the High Court had not indicated as to how the said case had any relevance to the dispute involved in the present case.

The respondents herein, on the other hand, attempted to substantiate that the facts of the present case had some similarity with the case in question.

Setting aside the order of the High Court and remitting the matter for a fresh hearing,

Held :

Case-law shows that the courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. (Para 7)

As the High Court had not even discussed as to how the decision in the case mentioned by it had any

similarity to the facts of the present case, the order of the High Court is set aside and the matter is remitted to it for a fresh hearing. (Paras 8 and 9). *State of Haryana* v. *AGM Management Services Ltd.*, (2006) 5 SCC 520.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 15-6-2006]

Union of India v. Major Bahadur Singh, (2006) 1 SCC 368, impliedly relied on

(g) Compensation

— Arts. 226 and 32 — Compensation — Award of, to victim of offence (rape in this case) to be paid by State — Direction in respect of, made by trial court — Confirmation of, by High Court in appeal against conviction — Propriety of *See* CRIMINAL PROCEDURE CODE, 1973, S. 357, (2006) 3 SCC 771

(h) Articles 226 and 227

[131] — Arts. 226 and 227 — Power of High Court to interfere with order of Magistrate taking cognizance under S. 190 CrPC — Scope — *High Court should not ordinarily interfere with the order passed by a competent court except in a proper case — Only such High Court within whose jurisdiction the subordinate court passed the order has jurisdiction to entertain application under Art. 227 — Criminal Procedure Code, 1973, S. 190 — High Courts must also keep in mind the doctrine of forum non conveniens*

In a criminal matter also the High Court may exercise its extraordinary writ jurisdiction but interference with an order of the Magistrate taking cognizance under Section 190 CrPC will stand somewhat on a different footing as an order taking cognizance can be the subject-matter of a revisional jurisdiction as well as of an application invoking the inherent jurisdiction of the High Court. A writ of certiorari ordinarily would not be issued by a writ court under Article 226 of the Constitution against a judicial officer. The High Court under Article 226 should not ordinarily interfere with an order taking cognizance passed by a competent court of law except in a proper case. Furthermore only such High Court within whose jurisdiction the order of the subordinate court has been passed, would have the jurisdiction to entertain an application under Article 227 of the Constitution unless it is established that the earlier cause of action arose within the jurisdiction thereof. The High Courts, however, must remind themselves about the doctrine of *forum non conveniens* also. (Paras 25, 28 and 29). *Mosaraf Hossain Khan* v. *Bhagheeratha Engg. Ltd.*, (2006) 3 SCC 658: (2006) 2 SCC (Cri) 98: AIR 2006 SC 1288: 2006 Cri LJ 1683: (2006) 2 KLT 525.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 24-2-2006]

[132] — Arts. 226 and 227 — Quashing of criminal complaint — Territorial jurisdiction of High Court — Cause of action — Meaning — *Whether it arose within the jurisdiction of the High Court before which writ petition filed — Complaint petition filed by appellant before CJM, Birbhum, West Bengal alleging dishonour of cheques issued to him by respondent Company towards payment for supply of material for construction work undertaken by respondent in W.B. — Cognizance of the offence under S. 138 of Negotiable Instruments Act taken by the CJM under S. 190 CrPC and summons issued on the respondents — Writ petition filed by respondents before Kerala High Court seeking declaration that they were not liable to be proceeded against on the basis of the complaint and quashing of the complaint — Held, Kerala High Court had no jurisdiction to entertain the said writ petition — None of the facts constituting cause of action, which were required to be proved by complainant for the purpose of attracting ingredients of S. 138 of Negotiable Instruments Act, arose within the jurisdiction of Kerala High Court — Facts that registered Head Office of the respondent Company was at Ernakulam in Kerala, that the amount due under the cheques in question was meant to be payable at Ernakulam and that payment in respect of one of the dishonoured cheques was later sent from Ernakulam not relevant for holding that a part of the cause of action arose within the territorial jurisdiction of Kerala High Court — Civil Procedure Code, 1908, S. 20 — Criminal Procedure Code, 1973, S. 482 — Negotiable Instruments Act, 1881, Ss. 142(b) and 138 — Words and phrases — "Cause of action"*

The appellant entered into a contract with Respondent 1 Company, for supply of stone chips in connection with the work of construction of major bridges between Dhankuni and Kharagpur in the State of West Bengal undertaken by the respondent as a part of ongoing project of the National Highway Authority of India. For the purpose of executing the said work the Company entered into an engineering contract with the NHA. The Company used to hand over post-dated cheques to the appellant for securing payment for supply of stone chips. The Company issued six cheques, which were deposited by the appellant with the bank in Birbhum, Suri branch. On dishonour of the said cheques, a demand notice was sent to the respondent by the appellant demanding payment of the said cheques. Payment in respect of one of the cheques was however later sent by the respondent Company from Ernakulam in State of Kerala where it had its registered Head Office. The appellant filed a complaint petition in the Court of CJM, Birbhum at Suri alleging that the cheques issued by the

respondents having been dishonoured, they committed offence under Section 138 of the Negotiable Instruments Act. The CJM upon examining the appellant on oath took cognizance of the offence and directed issuance of summons on the respondents. Despite receipt of the summons, instead of appearing before the CJM, Birbhum at Suri, the respondents filed a writ petition in the High Court of Kerala at Ernakulam praying inter alia for a declaration that they were not liable to be proceeded against on the basis of the complaint and for issuance of appropriate writ, order or direction quashing the complaint. Interim relief by way of stay of all further proceedings pursuant to the said complaint petition was also prayed for which the Single Judge of the High Court granted. In the writ petition it was stated that there was no question of the Company running away from its responsibility of paying the amount due, but it needed some time to augment its resources in the context of its financial entanglement. The jurisdiction of the High Court was invoked by stating in the writ petition that part of the cause of action arose within the territorial jurisdiction of the Kerala High Court. It was stated that the registered head office of the Company was at Ernakulam, that the amount due under the cheques was meant to be payable at Ernakulam and that out of the six dishonoured cheques, payment in respect of one cheque was sent from Ernakulam. A Single Judge of the High Court passed an order granting the interim stay prayed for. Before the Supreme Court the primary question was as to whether the Kerala High Court had jurisdiction in the matter.

Allowing the appeal with costs the Supreme Court

Held :

The averments made in the writ petition filed by the respondent herein even if given face value and taken to be correct in their entirety would not confer any jurisdiction upon the Kerala High Court. The agreement was entered into within the jurisdiction of the Calcutta High Court. The project for which the supply of stone chips and transportation was being carried out was also within the State of West Bengal. Payments were obviously required to be made within the jurisdiction of the said Court where either the contract had been entered into or where payment was to be made. A bare perusal of the complaint petition would clearly go to show that according to the complainant the entire cause of action arose within the jurisdiction of the District Court of Birbhum and in that view of the matter it is that court which will have jurisdiction to take cognizance of the offence. In fact the jurisdiction of the Court of CJM, Birbhum, Suri, is not in question. It is not contended that the complainant had suppressed material fact and which if not disclosed would have demonstrated that the offence was committed outside the jurisdiction of the said court. Even if Section 178 CrPC is attracted, the Court of the Chief Judicial Magistrate, Birbhum will alone have jurisdiction in the matter. (Paras 33 and 31)

For the purpose of proving the ingredients of the offence under Section 138 of the NI Act, the complainant appellant was required to prove the facts constituting the cause of action therefor none of which arose within the jurisdiction of the Kerala High Court. Cause of action within the meaning of Section 142(*b*) of the Act can arise only once. Cause of action within the meaning of clause (2) of Article 226 shall have the same meaning as is ordinarily understood. The expression "cause of action" has a definite connotation. It means a bundle of facts which would be required to be proved. Sending of cheques from Ernakulam or the respondents having an office at that place did not form an integral part of "cause of action" for which the complaint petition was filed by the appellant and cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881 was taken by the Chief Judicial Magistrate, Suri in West Bengal. (Paras 36, 19 and 32)

The object of the provision of Section 138 of the NI Act is that for proper and smooth functioning of business transaction in particular, use of cheques as negotiable instruments would primarily depend upon the integrity and honesty of the parties. It was noticed that cheques used to be issued as a device *inter alia* for defrauding the creditors and stalling the payments. Dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. Remedy available in a civil court is a long-drawn process and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee. (Para 34)

In a criminal matter also the High Court may exercise its extraordinary writ jurisdiction but interference with an order of the Magistrate taking cognizance under Section 190 CrPC will stand somewhat on a different footing as an order taking cognizance can be the subject-matter of a revisional jurisdiction as well as of an application invoking the inherent jurisdiction of the High Court. A writ of certiorari ordinarily would not be issued by a writ court under Article 226 of the Constitution against a judicial officer. The High Court under Article 226 should not ordinarily interfere with an order taking cognizance passed by a competent

(h) Articles 226 and 227 *(contd.)*

court of law except in a proper case. Furthermore only such High Court within whose jurisdiction the order of the subordinate court has been passed, would have the jurisdiction to entertain an application under Article 227 of the Constitution unless it is established that the earlier cause of action arose within the jurisdiction thereof. The High Courts, however, must remind themselves about the doctrine of *forum non conveniens* also. (Paras 25, 28 and 29). *Mosaraf Hossain Khan* v. *Bhagheeratha Engg. Ltd.*, (2006) 3 SCC 658: (2006) 2 SCC (Cri) 98: AIR 2006 SC 1288: 2006 Cri LJ 1683: (2006) 2 KLT 525.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 24-2-2006]

Nakul Deo Singh v. *Dy. Commandant, (1999) 3 KLT 629 (FB), approved*

— Arts. 226 and 227 — Scope of interference — Enlargement of statutorily restricted grounds of appeal by filing of writ petition — Impermissibility *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 173, 170 and 149(2), (2006) 3 SCC 242

— Art. 227 *See* Arts. 226 and 227

See also CRIMINAL PROCEDURE CODE, 1973, Ss. 482 and 483, (2006) 7 SCC 296

[133] — Art. 227 — High Court's power of superintendence and control over all subordinate courts and tribunals — Nature of — *Held, is both of administrative and judicial nature — It could be exercised* ***suo motu also*** *— But such power of superintendence does not imply that the High Courts can influence the subordinate judiciary to pass any order or judgment in a particular manner*

The power of superintendence over all the subordinate courts and tribunals is given to the High Court under Article 227 of the Constitution. The said power is both of administrative and judicial nature and it could be exercised *suo motu also*. However, such power of superintendence does not imply that the High Courts can influence the subordinate judiciary to pass any order or judgment in a particular manner. While invoking the provisions of Article 227 the High Court would exercise such powers most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority. It cannot intervene in the judicial functions of the lower judiciary. The independence of the subordinate courts in the discharge of their judicial functions is of paramount importance, just as the independence of the superior courts in the discharge of their judicial functions is. It is the members of the subordinate judiciary who directly interact with the parties in the course of proceedings of the case and, therefore, it is no less important that their independence should be protected effectively to the satisfaction of the litigants. The independence of the judiciary has been considered as a part of the basic structure of the Constitution and such independence is postulated not only from the executive, but also from all other sources of pressure. (Paras 10 and 14). *Jasbir Singh* v. *State of Punjab*, (2006) 8 SCC 294: (2006) 3 SCC (Cri) 470.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 11-10-2006]

[134] — Art. 227 — Jurisdiction under — Scope of — Held, it is to be invoked only to correct errors of jurisdiction — *Where the court below comes to a finding of fact by asking itself a wrong question or approaches the question in an improper manner, the said finding cannot be said to be one rendered with jurisdiction and, therefore, is amenable to correction under Art. 227 — Failure to render necessary findings to support its order would also be a jurisdictional error liable to be corrected under Art. 227. Kishore Kumar Khaitan* v. *Praveen Kumar Singh*, (2006) 3 SCC 312: AIR 2006 SC 1474.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.K. Balasubramanyan**, JJ. [Date of decision: 13-2-2006]

[135] — Arts. 227, 235 & 50 — High Court's power of superintendence and control over subordinate courts — Scope of — Whether it authorises the "Inspecting Judges" of High Court to transact any judicial work which is in the domain of subordinate courts — *Administrative Judge of High Court during the course of inspection passing order to Sessions Judge to consider the bail application of appellant and enlarge him on bail — Propriety of — Held, power under Art. 227 is to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority — Powers under Arts. 227 and 235 not to be exercised to interfere with judicial functions of subordinate courts — Protection of independence of subordinate courts in the discharge of their judicial functions, emphasised — Held, under the aforesaid articles the High Court cannot direct the subordinate court to pass a judicial order in a particular manner as that would amount to interfering with the independence of subordinate judiciary — In this view, stating the powers and functions of Inspecting Judge, held, a High Court Judge during the course of inspection has no power to pass any judicial order in individual cases pending in subordinate courts — During inspection he cannot pass any order on interim applications, such as bail petitions or transfer applications or applications for interim injunction, howsoever justified they may be — If any bail application is received by Inspecting Judge, the proper course*

would be to send the said application without commenting on merits of case to the court concerned to pass appropriate orders

The appellant was arrested and remanded to judicial custody in a case under the provisions of the Prevention of Corruption Act and IPC. The appellant moved an application for bail, but the same was rejected. The appellant moved another bail application on 24-4-2003 before the Sessions Judge, which was fixed for hearing on 5-5-2003. Meanwhile, on 29-4-2003 the Administrative Judge of the High Court concerned came for annual inspection to the District and Sessions Court concerned. The said Judge also visited jail as part of the inspection programme. The appellant moved an application for bail during the course of inspection. The Inspecting Judge noticed the police officers as representative of the prosecution, and since they had no objection to the granting of bail to the appellant, the said Judge, considering that the co-accused had been enlarged on bail and the appellant was in jail for the last seven months, passed an order directing the Sessions Judge to look into the application of the appellant and enlarge him on bail as his trial was likely to take some time before it was concluded. Pursuant to the said order, the appellant was released on bail by the Sessions Judge. Thereafter, on a complaint being made to the Chief Justice of the High Court alleging mala fides on the part of the Sessions Judge in granting bail to the appellant, the Chief Justice called for the proceedings and directed that the entire matter be placed before the very same Administrative Judge on the judicial side. The *de facto* complainant reiterated her allegation and sought for cancellation of bail granted to the appellant. The Administrative Judge held that while passing the order of bail, the Sessions Judge had not discussed the matter on merit and, therefore, the said order was set aside. Hence, the present appeal.

Before the Supreme Court it was submitted that the Judges of the High Court are vested with the power of superintendence and control over all courts and tribunals subordinate to the High Court under Article 227, and as part of such constitutional power, the Inspecting Judges have the right and duty to consider the bail applications during inspection. It was also contended that the power of superintendence and control over the subordinate courts is conferred on the High Court under Article 235 of the Constitution and therefore the Inspecting Judge was fully justified under certain circumstances to entertain the bail petitions or transfer applications and direct the District Judges or other courts to pass appropriate orders.

Disposing of the appeal,

Held :

The power of superintendence over all the subordinate courts and tribunals is given to the High Court under Article 227 of the Constitution. The said power is both of administrative and judicial nature and it could be exercised *suo motu also*. However, such power of superintendence does not imply that the High Courts can influence the subordinate judiciary to pass any order or judgment in a particular manner. While invoking the provisions of Article 227 the High Court would exercise such powers most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority. It cannot intervene in the judicial functions of the lower judiciary. The independence of the subordinate courts in the discharge of their judicial functions is of paramount importance, just as the independence of the superior courts in the discharge of their judicial functions is. It is the members of the subordinate judiciary who directly interact with the parties in the course of proceedings of the case and, therefore, it is no less important that their independence should be protected effectively to the satisfaction of the litigants. The independence of the judiciary has been considered as a part of the basic structure of the Constitution and such independence is postulated not only from the executive, but also from all other sources of pressure. (Paras 10 and 14)

In respect of Article 235 also, the powers of control to be exercised thereunder do not extend to interfering with the judicial functions of the subordinate courts. By virtue of the power under Article 235 the High Court cannot direct the presiding officer of the subordinate court to pass a judicial order in a particular manner as that would certainly amount to interfering with the independence of the subordinate judiciary. (Para 15)

In the course of inspection, the High Court Judge is required to examine whether the courts are functioning within the norms laid down by the High Court. Mostly the inspection is to be confined to the administrative functioning of the courts and its officers. If any member of the administrative staff is not doing the work assigned to him or is causing any delay in the process of administration of justice, the Inspecting Judge can give proper direction and see that the courts function smoothly. But under no circumstances, the Inspecting Judge, as part of his administrative duty enjoys the power to interfere with the judicial functions of the subordinate courts in individual cases. In the course of inspection, a High Court Judge cannot pass any order on interim applications, such as bail petitions or transfer applications or applications for

interim injunction, howsoever justified they may be. Orders on bail applications are passed under the provisions of the Code of Criminal Procedure or under various other enactments, which provide for grant of bail and such orders are passed as part of the judicial work. The Inspecting Judge is not supposed to pass any judicial order in individual cases in the course of inspection. While on inspection, he is not supposed to perform any judicial work. Of course, he can give administrative directions to the presiding officer or to any of the subordinate staff, if such directions are pertinent in the context of administration of justice. Except giving general directions regarding any matter concerning administration of justice, any interference in the judicial functions of the presiding officer would amount to interference with the independence of the subordinate judiciary. (Paras 16 and 17)

Therefore, even if any application for bail is received by the Inspecting Judge, the proper course is to send the application to the court concerned to pass appropriate orders. When the Inspecting Judge visits the jail, it is quite likely that so many inmates of the jail may file petitions before the Judge concerned. It is the duty of the Judge to see whether there is any merit in any of these petitions. If any application for bail is received, he can very well send it to the court concerned without making any comments on the merits of the case. On the contrary, if the learned Inspecting Judge passes any order in such matter, he would only be usurping the powers of the courts authorised to pass such orders. (Para 19). *Jasbir Singh* v. *State of Punjab*, (2006) 8 SCC 294: (2006) 3 SCC (Cri) 470.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 11-10-2006]

[136] — Arts. 227 and 226 — Revisional jurisdiction of High Court — Scope — *Held, can always be exercised where the subordinate court is found to have acted without jurisdiction or in excess of jurisdiction and for the purpose of keeping the subordinate court within bounds when the subordinate court has assumed jurisdiction which it did not have or has failed to exercise jurisdiction which it does have — Hence, since the instant case not falling under any of the enumerated categories, interference in exercise of revisional jurisdiction uncalled for* (Para 4). *Securities and Exchange Board of India* v. *Arihant Cotsyn Ltd.*, (2005) 13 SCC 498.

Bench Strength **2**. Coram: *S.N. Variava* and *Tarun Chatterjee*, JJ. [Date of decision: 14-9-2005]

— Art. 233 *See* Arts. 32, 233 and 235

— Arts. 233 and 234 — Appointment or posting of Special Judges under Prevention of Corruption Act, 1988 — Primacy of High Court in process of *See* PREVENTION OF CORRUPTION ACT, 1988, S. 4, (2007) 1 SCC 1

[137] — Arts. 233, 235 and 14 — Appointment of Special Judges — Proper mode and procedure for — Nature of power exercised by High Court in such appointment — Susceptibility to judicial review (per Kapadia, J.) — *Need for integrity of process, uniform application of standards and non-arbitrariness in selection of candidates — Importance of remarks made by inspecting Judge in Annual Confidential Reports (ACRs) of candidates concerned — Choice of candidate by High Court under Arts. 233 and 235 is an administrative function and falls in domain of public law and, therefore, that choice has to be exercised on some standard, failing which judicial review steps in — If different standards or no standards are applied it breaks the integrity of the process and brings in discrimination and arbitrariness which violates Art. 14 and therefore attracts judicial review — Prevention of Corruption Act, 1988, S. 3 — CrPC, 1973, Ss. 9, 13 and 18*

It is important to bear in mind that in the matter of economic scams, be it security transactions or Fodder Scams or Taj Corridor it is the economic interest of the country which is at stake. These cases are highly complicated in which complicated questions are involved and, therefore, posting of the Judge plays a vital role. (Para 98)

Institutional autonomy of the High Court on its administrative side under Article 233 and Article 235 is a well-known concept. It is based on public trust and confidence. Existence of the power, as a concept, is different from exercise of power. Promotions and posting of judicial officers fall within the domain of the High Court on its administrative side. At the same time it is important to note that choice of the candidate falls in the domain of public law and, therefore, that choice has to be exercised on some standard, failing which judicial review steps in. Standards of evaluation in matters of promotion and posting have to be uniformly applied otherwise arbitrariness comes in. Integrity of the evaluation process has to be maintained. If different standards or no standards are applied it breaks the integrity of the process which brings in discrimination and arbitrariness which violates Article 14 and therefore attracts judicial review. (Para 87)

Ishwar Chand Jain case, (1999) 4 SCC 579, emphasises the importance of the remarks given by the Inspecting Judge. The object of inspection is to assess the work performed, capability, competency besides integrity of the candidate. These gradations/categorisations given by the Inspecting Judges are required to be placed before the Full Court. There is a prescribed form in which the Confidential Reports (CRs) are recorded. That form indicates various parameters, namely, knowledge of law, whether the

officer is hardworking, the rating to be given in respect of the judgments, namely, A + (outstanding), A (very good), B + (good) and B (satisfactory). The point to be noted is that apart from honesty and integrity there are other parameters to be fulfilled by the judicial officers and that is where the disposals, ability and all other relevant factors come in. (Paras 97 and 92). *Rajiv Ranjan Singh 'Lalan' (VIII)* v. *Union of India*, (2006) 6 SCC 613: (2006) 3 SCC (Cri) 125.

Bench Strength **3**. Coram: **K.G. Balakrishnan**[1], **Dr. Ar. Lakshmanan**[2] and **S.H. Kapadia**[3], JJ. [Date of decision: 21-8-2006]

[138] — Arts. 233 to 235 — Control of High Court over subordinate judiciary — Nature and scope — *Held, the same is comprehensive, exclusive and effective and it is to subserve a basic feature of the Constitution i.e. independence of judiciary*

There is no doubt that the control of the High Court is comprehensive, exclusive and effective and it is to subserve the basic feature of the Constitution i.e. independence of judiciary. (Para 80). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

— **Art. 234** *See* Arts. 233 and 234

— **Art. 235** *See* Arts. 32, 233 and 235

See also Arts. 227, 235 & 50

See also Arts. 233, 235 and 14

— **Art. 245** *See* Arts. 32, 226 & 136 and 245, 246 & 368

— **Art. 246** *See* Arts. 32, 226 & 136 and 245, 246 & 368

— **Art. 300** *See* Arts. 21, 32, 226 and 300

See also Arts. 32, 226, 21 and 300

[139] — Art. 348 — Authoritative text of Acts of Parliament continues to be that in English — *Official Languages Act, 1963, Ss. 3, 5 & 6*

It is not possible to accept the contention that after the coming into force of the Official Languages Act, 1963, the Hindi version was the authoritative text and in the case of ambiguity between Hindi and English versions, the Hindi version would prevail. Article 348 of the Constitution clearly provides English to be the authoritative text in respect of Acts of Parliament, and amendments to Acts subject to any law made by Parliament. From a conjoint reading of Article 348 of the Constitution and Sections 3 and 5 of the Official Languages Act, 1963, English continues to remain the authoritative text in respect of Acts of Parliament. (Para 21). *Prabhat Kumar Sharma* v. *Union Public Service Commission*, (2006) 10 SCC 587: (2007) 1 SCC (L&S) 240.

Bench Strength **2**. Coram: **Ashok Bhan** and *Markandey Katju*, JJ. [Date of decision: 19-10-2006]

— **Art. 355** *See* Sch. VII List I Entry 1 and Art. 355

— **Art. 368** *See* Arts. 32, 226 & 136 and 245, 246 & 368

— **Sch. VII List I Entry 1** *See* Sch. VII List I Entry 1 and Art. 355

— **Sch. VII List I Entry 77** *See* Arts. 129, 215, 142(2) and Sch. VII List I Entry 77 & List III Entry 14

— **Sch. VII List III Entry 14** *See* Arts. 129, 215, 142(2) and Sch. VII List I Entry 77 & List III Entry 14

[140] — Sch. VII List I Entry 1 and Art. 355 — Transnational and International crimes — Appropriate investigating and law enforcement agency for — *International terrorism, transnational organised crimes like drug trafficking, money laundering, weapons' smuggling, currency counterfeiting, activities of mafia groups with transnational links — If fall within measures taken for defence of India within Sch. VII List I Entry 1 and internal security measures under Art. 355 — Whether cases arising out of such activities to be entrusted to CBI — Questions referred to expert bodies and Central Government — Views to be submitted within four months of this order — Police — CBI — Role of — Nature of cases to be directly entrusted to*

It has been suggested that cases arising out of threats emanating from international terrorism or organised crimes like drug trafficking, money laundering, smuggling of weapons from across the borders, counterfeiting of currency or the activities of mafia groups with transnational links be treated as measures taken for the defence of India as mentioned in Entry 1 List I Schedule VII to the Constitution and as internal security measures as contemplated under Article 355 as these threats and activities aim at destabilising the country and subverting the economy and thereby weakening its defence. Therefore it is suggested that the investigation of the above cases involving inter-State or international ramifications deserves to be entrusted to CBI. The National Human Rights Commission, the Sorabjee Committee and the Bureau of Police Research and Development are requested to examine the aforesaid suggestions and assist the Supreme Court by filing their considered views within four months. The Central Government is also directed to examine this suggestion and submit its views within that time. (Paras 32 and 33). *Prakash Singh* v. *Union of India*, (2006) 8 SCC 1: (2006) 3 SCC (Cri) 417.

Bench Strength **3**. Coram: **Y.K. Sabharwal**, **C.J.** and *C.K. Thakker* and *P.K. Balasubramanyan*, JJ. [Date of decision: 22-9-2006]

— **Sch. IX** *See* Arts. 14, 21 & 31-B and Sch. IX, Item 10

See also Sch. IX, Item 100 & Art. 31-B

— **Sch. IX, Item 100 & Art. 31-B** *See* FOREIGN EXCHANGE REGULATION ACT, 1973, (2006) 4 SCC 278

CONTEMPT OF COURT

Synopsis

1. Generally
2. Contempt of Courts Act, 1971
3. Perjury

1. GENERALLY

[141] — Nature of contempt proceedings — *Held, proceedings for contempt are essentially personal and punitive*

Proceedings for contempt are essentially personal and punitive. This does not mean that it is not open to the court, as a matter of law to make a finding of contempt against any official of the Government say, Home Secretary or a Minister. While contempt proceedings usually have these characteristics and contempt proceedings against a government department or a Minister in an official capacity would not be either personal or punitive (it would clearly not be appropriate to fine or sequester the assets of the Crown or a government department or an officer of the Crown acting in his official capacity), this does not mean that a finding of contempt against a government department or Minister would be pointless. The very fact of making such a finding would vindicate the requirements of justice. In addition, an order for costs could be made to underline the significance of a contempt. A purpose of the court's powers to make findings of contempt is to that ensure the orders of the court are obeyed. This jurisdiction is required to be coextensive with the court's jurisdiction to make the orders which need the protection which the jurisdiction to make findings of contempt provides. In civil proceedings the court can now make orders (other than injunctions or for specific performance) against authorised government departments or the Attorney General. On applications for judicial review, orders can be made against Ministers. In consequence such orders must be taken not to offend the theory that the Crown can supposedly do no wrong. Equally, if such orders are made and not obeyed, the body against whom the orders were made can be found guilty of contempt without offending that theory, which could be the only justifiable impediment against making a finding of contempt. (Paras 33 and 34). *T.N. Godavarman Thirumulpad (102)* v. *Ashok Khot*, (2006) 5 SCC 1: AIR 2006 SC 2007: 2006 Cri LJ 2773.

Bench Strength **3**. Coram: *Y.K. Sabharwal, C.J.* and **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 10-5-2006]

2. CONTEMPT OF COURTS ACT, 1971

— S. 2(b) *See* CONSTITUTION OF INDIA, Art. 142, (2006) 2 SCC 677

[142] — S. 2(b) — "Undertaking given to a court" — What is — Whether undertaking specifically needs to mention that it is to the court — *Held, in all decrees and orders of court, whenever the expression "a party undertakes" is used, it is always taken to mean that the undertaking is to the court*

The expression 'undertake' has come to acquire through long practice, a technical meaning. In all orders and decrees of the court, whenever the expression 'a party undertakes' has been used, it has always borne the meaning that the undertaking has been to the court. (Paras 14 and 15). *Rama Narang* v. *Ramesh Narang*, (2006) 11 SCC 114: AIR 2006 SC 1883: (2006) 2 KLT 740: 2006 Cri LJ 2369.

Bench Strength **3**. Coram: **Ruma Pal**, *B.N. Srikrishna* and *Dalveer Bhandari*, JJ. [Date of decision: 12-4-2006]

Bajranglal Gangadhar Khemka v. Kapurchand Ltd., AIR 1950 Bom 336: 52 Bom LR 363, approved

Bank of Baroda v. Sadruddin Hasan Daya, (2004) 1 SCC 360, followed

Nisha Kanto Roy Chowdhury v. Saroj Bashini Goho, AIR 1948 Cal 294: 49 Cri LJ 567, overruled

[143] — S. 2(b) — Definition of civil contempt under — Two categories of cases contained in, analysed, being (1) wilful disobedience to any process of court, and (2) wilful breach of an undertaking given to court — *Held, the two categories are separate classes of contumacious behaviour and cannot be treated as forming part of or taking colour from the other*

Dismissing the preliminary objection

Held :

Analysed, the definition of civil contempt in Section 2(*b*), Contempt of Courts Act, 1971 ("the Act") provides for two categories of cases, namely, (*1*) wilful disobedience to a process of court, and (*2*) wilful breach of an undertaking given to a court. As far as the first category is concerned, the word "any" further indicates the wide nature of the power. No distinction is statutorily drawn between an order passed after an adjudication and an order passed by consent. This first category is separate from the second and cannot be treated as forming part of or taking colour from the second category. The legislative intention clearly was to distinguish between the two and create distinct classes of contumacious behaviour. (Para 18). *Rama Narang* v. *Ramesh Narang*, (2006) 11 SCC 114: AIR 2006 SC 1883: (2006) 2 KLT 740: 2006 Cri LJ 2369.

Bench Strength **3**. Coram: **Ruma Pal**, *B.N. Srikrishna* and *Dalveer Bhandari*, JJ. [Date of decision: 12-4-2006]

[144] — S. 2(b) — Implementation of order neither practicable nor feasible, or in opinion of party concerned wrong or against rules — Course open to such party — *Held, in such cases party aggrieved should show respect to the court and approach the court rather than disobeying or acting in defiance of such an order*

Respect should always be shown to the court. If any party is aggrieved by the order which in its opinion is wrong or against rules or implementation is neither practicable nor feasible, it should approach the court. (Para 23). *T.N. Godavarman Thirumulpad (102)* v. *Ashok Khot*, (2006) 5 SCC 1: AIR 2006 SC 2007: 2006 Cri LJ 2773.

Bench Strength **3**. Coram: *Y.K. Sabharwal, C.J.* and **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 10-5-2006]

[145] — S. 2(b) — Wilful disobedience/non-compliance with consent decree passed under Or. 23 R. 3 CPC — Held, amounts to civil contempt — Effect of executability of consent decree on availability of contempt jurisdiction with regard to it — *Scope of the "wilful disobedience to* **any** *... process of a court" category of cases ("first category") coming under definition of civil contempt in S. 2(b) — Significance of word "any" used in the first category — Consent decree passed under Or. 23 R. 3 CPC, held, is included within the first category of cases ("second category") coming under definition of civil contempt, and not within the "wilful breach of an undertaking given to a court" category of cases coming under the definition — Further held, merely because a consent decree is executable, like all decree or orders executable under CPC, that would not take away court's contempt jurisdiction in case of wilful disobedience/non-compliance with it — Civil Procedure Code, 1908, Or. 23 R. 3 — Non-compliance with consent decree passed under — Held, amounts to civil contempt — Words and Phrases — "Imprimatur" — Meaning of*

Dismissing the preliminary objection

Held :

Analysed, the definition of civil contempt in Section 2(*b*), Contempt of Courts Act, 1971 ("the Act") provides for two categories of cases, namely, (*1*) wilful disobedience to a process of court, and (*2*) wilful breach of an undertaking given to a court. As far as the first category is concerned, the word "any" further indicates the wide nature of the power. No distinction is statutorily drawn between an order passed after an adjudication and an order passed by consent. This first category is separate from the second and cannot be treated as forming part of or taking colour from the second category. The legislative intention clearly was to distinguish between the two and create distinct classes of contumacious behaviour. (Para 18)

Section 2(*b*) itself provides that wilful violation of *any* order or decree, etc. would tantamount to contempt. A compromise decree is as much a decree as a decree passed on adjudication. It is not merely an agreement between the parties. In passing the decree by consent, the court adds its mandate to the consent. A consent decree is composed of both a command and a contract. A consent decree is a contract with the imprimatur of the court. "Imprimatur" means "authorised" or "approved". In other words by passing a decree in terms of a consent order the court authorises and approves the course of action consented to. Moreover, the provisions of Order 23 Rule 3 CPC require the court to pass a decree in accordance with the consent terms only when it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement. (Para 23)

All decrees and orders are executable under the Code of Civil Procedure. Consent decrees or orders are of course also executable. But merely because an order or decree is executable, would not take away the court's jurisdiction to deal with a matter under the Act provided the court is satisfied that the violation of the order or decree is such, that if proved, it would warrant punishment under Section 13 of the Act on the ground that the contempt substantially interferes or tends substantially to interfere with the due course of justice. In such circumstances it would neither be in consonance with the statute, judicial authority, principle or logic to draw any distinction between the wilful violation of the terms of a consent decree and wilful violation of a decree which is passed on adjudication. The fact that the petitioner can execute the decree can have no bearing on the contempt committed by the respondents. (Paras 24, 25 and 30)

Ultimately, the matter is one of the court's discretion having regard to the facts of the case. The fact that a decree is executable does not take away the court's jurisdiction in contempt. (Para 32)

In the present case, the consent terms arrived at between the parties were incorporated in the orders passed by the Court on 12-12-2001 and 8-1-2002. The decree as drawn up shows that order dated 8-1-2002 was to be "punctually observed and carried into execution by all concerned". A violation of the terms of the consent order would amount to a violation of the Court's orders dated 12-12-2001 and 8-1-2002 and, therefore, be punishable under the first limb of Section 2(*b*) of the Contempt of Courts Act, 1971. The question whether the respondents should not be held guilty of contempt because of any earlier confusion in the law reflected in *Babu Ram Gupta case*, (1980) 3

SCC 47, is a question which must be left for decision while disposing of the contempt petition on merits. It may be argued as an extenuating or mitigating factor once the respondents are held guilty of contempt. The submission does not pertain to the maintainability of the petition for contempt. The preliminary objection raised by the respondents regarding the non-maintainability of the petition for contempt is dismissed. (Para 33)

[The Supreme Court has proceeded on the basis that no undertaking was given to the Court by the respondents in the consent minutes and that therefore there was no question of their violating such undertaking.] (Para 20). *Rama Narang* v. *Ramesh Narang*, (2006) 11 SCC 114: AIR 2006 SC 1883: (2006) 2 KLT 740: 2006 Cri LJ 2369.

Bench Strength **3**. Coram: **Ruma Pal**, *B.N. Srikrishna* and *Dalveer Bhandari*, JJ. [Date of decision: 12-4-2006]

Bank of Baroda v. Sadruddin Hasan Daya, (2004) 1 SCC 360; R.N. Dey v. Bhagyabati Pramanik, (2000) 4 SCC 400, clarified and followed

Babu Ram Gupta v. Sudhir Bhasin, (1980) 3 SCC 47: 1980 SCC (Cri) 527, clarified and held, partly obiter

Nisha Kanto Roy Chowdhury v. Saroj Bashini Goho, AIR 1948 Cal 294: 49 Cri LJ 567, overruled

Bajranglal Gangadhar Khemka v. Kapurchand Ltd., AIR 1950 Bom 336: 52 Bom LR 363, approved

Rita Markandey v. Surjit Singh Arora, (1996) 6 SCC 14, distinguished

[146] — Ss. 2(b) and (c) — Nature and scope of contempt jurisdiction — Government officials acting in official capacity — Liability to punishment for contempt of court — *Held, it is open to a court as a matter of law to make a finding of contempt against any official of the Government, say, Home Secretary or a Minister — This would be the case even though contempt proceedings against a government department or a Minister in an official capacity would not be either personal or punitive — Reasons for, discussed*

In our democratic polity under the Constitution based on the concept of "rule of law" which We have adopted and given to ourselves and which serves as an aorta in the anatomy of our democratic system, THE LAW IS SUPREME. Everyone, whether individually or collectively, is unquestionably under the supremacy of law. Whoever he may be, however high he is, he is under the law. No matter how powerful he is and how rich he may be. Any country or society professing the rule of law as its basic feature or characteristic does not distinguish between high or low, weak or mighty. (Paras 3, 4 and 21)

Disobedience of the Supreme Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilised life in the society. That is why it is imperative and invariable that courts' orders are to be followed and complied with. (Para 5)

Proceedings for contempt are essentially personal and punitive. This does not mean that it is not open to the court, as a matter of law to make a finding of contempt against any official of the Government say, Home Secretary or a Minister. While contempt proceedings usually have these characteristics and contempt proceedings against a government department or a Minister in an official capacity would not be either personal or punitive (it would clearly not be appropriate to fine or sequester the assets of the Crown or a government department or an officer of the Crown acting in his official capacity), this does not mean that a finding of contempt against a government department or Minister would be pointless. The very fact of making such a finding would vindicate the requirements of justice. In addition, an order for costs could be made to underline the significance of a contempt. A purpose of the court's powers to make findings of contempt is to that ensure the orders of the court are obeyed. This jurisdiction is required to be coextensive with the court's jurisdiction to make the orders which need the protection which the jurisdiction to make findings of contempt provides. In civil proceedings the court can now make orders (other than injunctions or for specific performance) against authorised government departments or the Attorney General. On applications for judicial review, orders can be made against Ministers. In consequence such orders must be taken not to offend the theory that the Crown can supposedly do no wrong. Equally, if such orders are made and not obeyed, the body against whom the orders were made can be found guilty of contempt without offending that theory, which could be the only justifiable impediment against making a finding of contempt. (Paras 33 and 34). *T.N. Godavarman Thirumulpad (102)* v. *Ashok Khot*, (2006) 5 SCC 1: AIR 2006 SC 2007: 2006 Cri LJ 2773.

Bench Strength **3**. Coram: *Y.K. Sabharwal*, *C.J.* and **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 10-5-2006]

— Ss. 2(b) and 12 *See* CONSTITUTION OF INDIA, Art. 129, (2006) 9 SCC 295

[147] — S. 8 — Defence to contempt action — Confusion in law regarding effect of wilful disobe-

dience/non-compliance with consent decree — If a valid defence — *Matter left to court that would dispose of contempt application* (Para 33). *Rama Narang* v. *Ramesh Narang*, (2006) 11 SCC 114: AIR 2006 SC 1883: (2006) 2 KLT 740: 2006 Cri LJ 2369.

Bench Strength 3. Coram: **Ruma Pal**, *B.N. Srikrishna* and *Dalveer Bhandari*, JJ. [Date of decision: 12-4-2006]

Bank of Baroda v. Sadruddin Hasan Daya, (2004) 1 SCC 360; R.N. Dey v. Bhagyabati Pramanik, (2000) 4 SCC 400, clarified and followed

Babu Ram Gupta v. Sudhir Bhasin, (1980) 3 SCC 47: 1980 SCC (Cri) 527, clarified and held, partly obiter

Nisha Kanto Roy Chowdhury v. Saroj Bashini Goho, AIR 1948 Cal 294: 49 Cri LJ 567, overruled

Bajranglal Gangadhar Khemka v. Kapurchand Ltd., AIR 1950 Bom 336: 52 Bom LR 363, approved

Rita Markandey v. Surjit Singh Arora, (1996) 6 SCC 14, distinguished

[148] — Ss. 10 and 11 — Contempt proceedings — Matters that can be decided in — *Held, High Court can, in contempt proceedings, decide whether any contempt of court was committed, if yes, the quantum of punishment and matters incidental thereto — However, in such proceedings it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties — In the present case, suspended bank employee filing contempt petition for non-completion of departmental enquiry within the time-limit fixed by High Court — He impleading several parties therein as respondents — However, High Court finding a* ***prima facie*** *case to have been made out only against the enquiry officer S — High Court therefore issuing show-cause notice to S — In such circumstances, held, High Court ought to have decided whether there was any wilful disobedience of its order by S and, if so, punished him for contempt — It could not in the contempt proceeding make an order that S had by his conduct disqualified himself to be the enquiry officer and that another enquiry officer should be appointed — Further directions that the complainant should be reinstated in service with full back wages with deemed continuity of service, that he should not be prevented from discharging his duties and that the suspension order should be deemed to have been revoked, held, not justified as they were outside the scope of contempt proceedings — Hence, set aside — Constitution of India, Art. 215 — Contempt proceedings — Scope of*

The respondent was an employee of the appellant Bank and Appellants 2 and 3 herein were its Chairman and Secretary-in-charge. The respondent was placed under suspension pending departmental enquiry. At his instance, the High Court directed the Bank to issue charge-sheet and also directed the enquiry officer to conclude the enquiry within the time specified. Consequent to such an enquiry, the respondent was found guilty. The respondent then filed another writ petition for quashing the enquiry proceedings alleging bias against the enquiry officer. On 9-4-1997, a Single Judge of the High Court allowed the writ petition and directed the Chairman of the Bank to appoint someone who was not a member of the Bank's Board of Directors as the enquiry officer. He further directed that such enquiry officer should conduct the enquiry *de novo*, and submit the report within four months (from the date of first sitting). Consequently, *S* was appointed as the enquiry officer. He started a fresh enquiry. As the enquiry was not completed within four months from the date of first sitting, the respondent moved a contempt application. The Chairman of the Bank, the enquiry officer(*S*), the previous enquiry officer and the Secretary in charge of the Bank were impleaded *eo nomine* as respondents in the said contempt petition.

On perusing the records, the Single Judge formed the view that the enquiry officer had not proceeded with due diligence. He therefore made an order dated 20-11-1998 directing that: (*1*) a rule be issued against *S* requiring him to show cause as to why he should not be punished for committing contempt, (*2*) *S* having by his conduct, disqualified himself to be the enquiry officer should cease to be the enquiry officer and that the respondents would be free to appoint a new enquiry officer, and (*3*) the respondent herein (petitioner before the High Court) should be reinstated in service with continuity of service and back wages and that he should not be prevented in any manner from discharging his duties. He further directed that the suspension order should be deemed to have been revoked.

The Chairman and the Secretary in charge of the Bank filed an appeal against the said order. A Division Bench dismissed the said appeal as not maintainable under Section 19 of the Contempt of Courts Act, 1971. The Division Bench further held that the appeal did not satisfy the requirements of clause 15 of the Letters Patent, and, therefore, could not be entertained as a letters patent appeal. That, moreover the appeal by the Chairman and Secretary-in-Charge *eo nomine* was not maintainable. The Bank then filed the present appeal (CA No. 1727 of 2002) by special leave.

Thereafter, the Bank filed an appeal challenging the order dated 20-11-1998 passed by the Single Judge. However, a Division Bench dismissed that appeal as time-barred. The Bank then filed the other SLPs (C) Nos. 13045-46 of 2003.

On the said facts, the following questions arose for consideration:

(*i*) Where the High Court, in a contempt proceeding, renders a decision on the merits of a dispute

between the parties, either by an interlocutory order or final judgment, whether the same is appealable under Section 19 of the Contempt of Courts Act, 1971? If not, what is the remedy of the person aggrieved?

(*ii*) Where such a decision on merits is rendered by an interlocutory order of a learned Single Judge, whether an intra-court appeal is available under clause 15 of the Letters Patent?

(*iii*) Whether in the present contempt proceedings the Court could direct (*a*) that the employer should reinstate the employee forthwith; (*b*) that the employee should not be prevented from discharging his duties in any manner; (*c*) that the employee should be paid all arrears of salary; (*d*) that the enquiry officer should cease to be the enquiry officer and the employer should appoint a fresh enquiry officer; and (*e*) that the suspension should be deemed to have been revoked?

Allowing CA No. 1727 of 2002 and dismissing SLPs (C) Nos. 13045-46 as infructuous,

Held :

In a proceeding for contempt, the High Court can decide whether any contempt of court was committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

The Court by order dated 20-11-1998 came to the conclusion that a *prima facie* case was made out for issuing a show-cause notice only against *S* (the enquiry officer). That meant that no case was made out for issue of show-cause notice to the Chairman and Secretary in charge of the Bank. In such circumstances, the Court ought to have proceeded to consider whether there was any wilful disobedience of the order dated 9-4-1997 on the part of *S* and if so, punish him for contempt. The Single Judge could not have made an order in the contempt proceedings that *S* had, by his conduct, disqualified himself to be the enquiry officer and that he should cease to be the enquiry officer and that another enquiry officer should be appointed. (Paras 19 and 20)

There was also no justification for the further direction by the Single Judge in the contempt proceedings, that too by an interlocutory order, that the complainant should be reinstated into the service of the Bank, and should be deemed to be in the service of the Bank all through, that the employee should not be prevented in any manner from discharging his duties and that he should be paid all arrears of salary within four weeks, and that the suspension order should be deemed to have been revoked. Such directions were totally outside the scope of the proceedings for contempt and amounted to adjudication of rights and liabilities not in issue in the contempt proceedings. Hence, Directions 2 and 3 and the direction relating to revocation of suspension are liable to be set aside. [Paras 21 and 24(*i*)]. *Midnapore Peoples' Coop. Bank Ltd.* v. *Chunilal Nanda*, (2006) 5 SCC 399: AIR 2006 SC 2190: 2006 Cri LJ 2903: (2006) 102 Cut LT 452.

Bench Strength **2**. Coram: *B.P. Singh* and **R.V. Raveendran**, JJ. [Date of decision: 25-5-2006]

[149] — S. 12 — Apology — When acceptable — *Held, if apology is offered at the time when contemnor finds that court is going to impose punishment it ceases to be an apology and becomes an act of a cringing coward*

Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace, the apology is shorn of penitence and hence it is liable to be rejected. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment it ceases to be an apology and becomes an act of a cringing coward. Apology is not a weapon of defence to purge the guilty of their offence, nor is it intended to operate as universal panacea, but it is intended to be evidence of real contriteness. (Paras 31 and 32)

[Unconditional apology of the contemnors not accepted. Custodial sentence of one month's simple imprisonment imposed.] (Para 35). *T.N. Godavarman Thirumulpad (102)* v. *Ashok Khot*, (2006) 5 SCC 1: AIR 2006 SC 2007: 2006 Cri LJ 2773.

Bench Strength **3**. Coram: *Y.K. Sabharwal, C.J.* and **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 10-5-2006]

L.D. Jaikwal v. State of U.P., (1984) 3 SCC 405: 1984 SCC (Cri) 421, applied

[150] — S. 12 — Contempt by high government officials in their official capacity — Vindication of the rule of law — Minister and Principal Secretary to Minister committing contempt of court (both civil and criminal) — Appropriate punishment for — Exemplary punishment — Need for — Imposition of custodial sentence instead of mere imposition of exemplary costs — *Minister and Principal Secretary, Department of Forests, Government of Maharashtra found to have acted brazenly and wilfully in defiance of orders of Supreme Court, by permitting certain sawmills/veneer and plywood industries to recommence operations in State of Maharashtra — Said contemnors also found to have manipulated official record to try and hide their guilt — Held, in this case contemnors deserve severe punishment — This will set an example for those who have a propensity for disregarding court's orders because of their money power, social status or posts held —*

Exemplary sentences called for — Mere imposition of exemplary costs would not be adequate — Considering the high positions held by the contemnors more stringent punishment is called for, and therefore custodial sentence be imposed — On facts, custodial sentence of one month's SI imposed — Constitution of India, Arts. 129 and 216

The case at hand involved two contemnors. Ashok Khot ("Contemnor 1"), Principal Secretary, Department of Forests, Government of Maharashtra and Swarup Singh Naik ("Contemnor 2"), Minister in charge of the Department of Forests at the relevant point of time. On the basis of submissions made by the amicus curiae, proceedings were initiated against them. It was highlighted by the amicus curiae that the respondents had acted in brazen defiance of the orders of the Supreme Court and their conduct constituted contempt by way of (*a*) wilful disobedience of directions issued by the Supreme Court, (*b*) the manner in which the contemnors had conducted themselves clearly tended to lower the authority of the Supreme Court and obstructed the administration of justice, and (*c*) their conduct fell both under the definition of civil contempt, as well as seeing dimensions of the matters, under criminal contempt.

The Supreme Court by *Godavarman (2)*, (1997) 3 SCC 312, had directed the closure of all unlicensed sawmills, veneer and plywood industries. Further, by *Godavarman (58)*, (2002) 10 SCC 606, it was directed that no State Government would permit the opening of any sawmill, veneer and plywood industry without the prior permission of the Central Empowered Committee ("CEC") appointed by the Supreme Court . The State of Maharashtra by IA No. 414 had sought permission to permit the reopening of sawmills/veneer and plywood industries inter alia dependent on imported timber, which permission had been declined by the Supreme Court vide its order dated 14-7-2003, *Godavarman (63)*. On enquiries made by CEC as well as the amicus curiae the State Government had stated that the orders of the Supreme Court would be complied with and the six mills in question were actually closed.

But by orders dated 7-4-2004 and 29-5-2004, the State of Maharashtra granted permission to the aforesaid six units to operate in the State. Such permissions were granted allegedly on the basis of decisions taken by Contemnors 1 and 2 deliberately and consciously though fully aware of the orders of the Supreme Court, with the sole motive of favouring those units and to evade enforcement of the orders of the Supreme Court. It was submitted that as a result of such orders, the units had been permitted to operate in direct contravention of the orders of the Supreme Court.

Disposing of the contempt petition with IAs,

Held :

In our democratic polity under the Constitution based on the concept of "rule of law" which We have adopted and given to ourselves and which serves as an aorta in the anatomy of our democratic system, THE LAW IS SUPREME. Everyone, whether individually or collectively, is unquestionably under the supremacy of law. Whoever he may be, however high he is, he is under the law. No matter how powerful he is and how rich he may be. Any country or society professing the rule of law as its basic feature or characteristic does not distinguish between high or low, weak or mighty. (Paras 3, 4 and 21)

Disobedience of the Supreme Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilised life in the society. That is why it is imperative and invariable that courts' orders are to be followed and complied with. (Para 5)

Proceedings for contempt are essentially personal and punitive. This does not mean that it is not open to the court, as a matter of law to make a finding of contempt against any official of the Government say, Home Secretary or a Minister. While contempt proceedings usually have these characteristics and contempt proceedings against a government department or a Minister in an official capacity would not be either personal or punitive (it would clearly not be appropriate to fine or sequester the assets of the Crown or a government department or an officer of the Crown acting in his official capacity), this does not mean that a finding of contempt against a government department or Minister would be pointless. The very fact of making such a finding would vindicate the requirements of justice. In addition, an order for costs could be made to underline the significance of a contempt. A purpose of the court's powers to make findings of contempt is to that ensure the orders of the court are obeyed. This jurisdiction is required to be coextensive with the court's jurisdiction to make the orders which need the protection which the jurisdiction to make findings of contempt provides. In civil proceedings the court can now make orders (other

than injunctions or for specific performance) against authorised government departments or the Attorney General. On applications for judicial review, orders can be made against Ministers. In consequence such orders must be taken not to offend the theory that the Crown can supposedly do no wrong. Equally, if such orders are made and not obeyed, the body against whom the orders were made can be found guilty of contempt without offending that theory, which could be the only justifiable impediment against making a finding of contempt. (Paras 33 and 34)

Respect should always be shown to the court. If any party is aggrieved by the order which in its opinion is wrong or against rules or implementation is neither practicable nor feasible, it should approach the court. (Para 23)

There are several factors which completely nullify the alleged claim of bona fides made by the contemnors in the present case. With reference to the orders passed by Contemnors 1 and 2 several units in other States like U.P. started making demands for similar permissions. When this came to the notice of CEC and amicus curiae, they intimated the State Government about the violation of the orders. The view of CEC was contested by the State of Maharashtra. Here comes into picture the manipulation in the official records. It has been accepted by Contemnor 1 that on 1-2-2005 he had made a note in Marathi in the official file. The object of introducing this note is very clear i.e. to show that Contemnor 1's view was a possible view as there were different viewpoints on the subject and therefore his having acted in the way that he did could be justified. This falsification of the record and various other facts on record leave no manner of doubt that Contemnor 1 has deliberately and wilfully disregarded the authority of law. (Paras 14, 17 and 19)

Stand of Contemnor 2 is that he being not very highly educated depended on the view of HPC/ highly-placed officials. This plea is not only hollow but without any substance. As Contemnor 2 in his reply has indicated that he has been a Parliamentarian, a Member of the Legislative Assembly and Minister for a very long period, to say that he was not aware of the complexities of the orders of the Supreme Court and, therefore, depended on the top bureaucrats, is a futile attempt to shift the responsibility. He has not even indicated as to why the view of the Deputy Secretary (a view contrary to which the contemptuous orders of the State of Maharashtra were made) was not to be accepted. He tried to take shelter behind the so-called view of HPC and an alleged mistake committed by the typist in the reply filed before the Supreme Court. (Para 24)

From the orders of the Supreme Court which have been brazenly disregarded it is crystal clear that the applications of those sawmills eligible for grant of licences were required to be sent to CEC, which was then required to submit a report to the Supreme Court. Thereafter the Supreme Court would have decided on the question of entitlement for licence. The procedure mandated by the Supreme Court was not followed. Instead of that, by their impugned actions, the contemnors permitted resumption of operations by the unit-holders. There was absolutely no confusion or scope for entertaining doubt as claimed by the contemnors. (Para 26)

The facts on record show the brazen manner in which facts have been distorted and without any manner of doubt, wilfully. The explanations of the contemnors are clearly unacceptable. Mens rea is writ large. The inevitable conclusion is that both Contemnors 1 and 2 deliberately flouted the orders of the Supreme Court in a brazen manner. It cannot be said by any stretch of imagination that there was no mens rea involved. The fact situation clearly shows to the contrary. (Paras 27 to 29)

This is a case where not only right from the beginning attempt has been made to overreach the orders of the Supreme Court but also to draw red herrings. Still worse is the accepted position of inserting a note in the official file with oblique motives. That makes the situation worse. In this case the contemnors deserve severe punishment. This will set an example for those who have a propensity for disregarding the court's orders because of their money power, social status or posts held. Exemplary sentences are called for in respect of both the contemnors. Custodial sentence of one month's simple imprisonment in each case would meet the ends of justice. In *Godavarman (67)*, (2003) 10 Scale 1126, costs of Rs 50,000 were awarded against the errant official concerned (a Deputy Forest Officer). However that was the case of an officer in the lower rung. Considering the high positions held by the contemnors in the present case more stringent punishment is called for, and, therefore a custodial sentence has been imposed. (Para 35). *T.N. Godavarman Thirumulpad (102)* v. *Ashok Khot*, (2006) 5 SCC 1: AIR 2006 SC 2007: 2006 Cri LJ 2773.

Bench Strength **3**. Coram: *Y.K. Sabharwal, C.J.* and **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 10-5-2006]

— S. 12 — Contempt of court — Disowning statements/Perjury by witness — Punishment to be imposed
See CONSTITUTION OF INDIA, Arts. 129 and 215, (2006) 3 SCC 374

— Ss. 15 and 12 — Nature, scope and applicability
See CONSTITUTION OF INDIA, Arts. 129, 215, 142(2) and Sch. VII List I Entry 77 & List III Entry 14, (2006) 3 SCC 374

[151] — Ss. 19, 10 & 11 — Appeal under S. 19 against orders passed in contempt proceedings — When maintainable and when not — Remedy, if any, in case of non-appealable order/decision — *Case-law discussed — Any direction issued or decision made by High Court, in contempt proceedings, on the merits of a dispute between the parties unless incidental to or inextricably connected with the order punishing for contempt, held, is not in the exercise of "jurisdiction to punish for contempt" and, therefore, not appealable under S. 19 — However, such an order can be challenged in an intra-court appeal (if the order was of a Single Judge and there was a provision for intra-court appeal) or by special leave under Art. 136 of the Constitution — High Courts — Letters Patent of Calcutta High Court, Cl. 15 — Appeal under, against such orders passed in contempt proceedings as are not appealable under S. 19, Contempt of Courts Act, 1971 — Maintainability — Constitution of India, Arts. 215 and 136 — Words and phrases — "jurisdiction to punish for contempt"*

The following position emerges from case-law in regard to appeals against orders in contempt proceedings:

I. An appeal under Section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court was committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of "jurisdiction to punish for contempt" and, therefore, not appealable under Section 19. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 can also encompass the incidental or inextricably connected directions.

V. If the High Court decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a Single Judge and there was a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution (in other cases). (Para 11). *Midnapore Peoples' Coop. Bank Ltd.* v. *Chunilal Nanda*, (2006) 5 SCC 399: AIR 2006 SC 2190: 2006 Cri LJ 2903: (2006) 102 Cut LT 452.

Bench Strength **2**. Coram: *B.P. Singh* and **R.V. Raveendran**, JJ. [Date of decision: 25-5-2006]

3. PERJURY

See CONSTITUTION OF INDIA, Arts. 129 and 215, (2006) 3 SCC 374

CONTRACT ACT, 1872

— Ss. 37, 51 and 52 *See* CRIMINAL PROCEDURE CODE, 1973, S. 468, (2005) 13 SCC 699

CONVICTION

See CRIMINAL TRIAL

See also PENAL CODE, 1860 — 'Sections 375 and 376 — Rape'

COPYRIGHT ACT, 1957

See INTELLECTUAL PROPERTY

CORPORATE CRIMINAL LIABILITY

See CORPORATE LAWS

CORPORATE LAWS

CORPORATE CRIMINAL LIABILITY

— Statute prescribing mandatory sentence of imprisonment and fine — Fact that no imprisonment can be imposed on a company or an incorporated body — Effect of — Whether company enjoys any immunity from prosecution in such case *See* FOREIGN EXCHANGE REGULATION ACT, 1973, S. 56, (2006) 4 SCC 278

CORRUPTION

See PUBLIC ACCOUNTABILITY AND VIGILANCE

COSTS

See CONSTITUTION OF INDIA — 'Article 136'

See also PRACTICE AND PROCEDURE

COURTS

1. ROLE OF COURTS

— Providing content to rights — Preservation and protection of Constitution and law-making *See* CONSTITUTION OF INDIA — 'Article 32' — Nature and Scope — Content of rights, Arts. 32, 226 & 136 and 245, 246 & 368, (2006) 8 SCC 212

2. SPECIAL JUDGE

— Appointment by High Court to try scam case — Judicial review by Supreme Court through PIL *See* CONSTITUTION OF INDIA — 'Article 32' — Public Interest Litigation/PIL, Arts. 32, 233 and 235, (2006) 6 SCC 613

CREDIBILITY OF WITNESSES

See CRIMINAL TRIAL — 'Appreciation of evidence'

CRIMES AGAINST WOMEN AND CHILDREN

Synopsis

1. Bride Burning
2. Compensation to Rape Victim
3. Disclosure of Names of Victims
4. Dowry
5. Dowry Death
6. Eve Teasing
7. Gang Rape
8. Kidnapping
9. Rape
10. Rape by Persons in Position of Authority
11. Rape of Minors
12. Rape of Pregnant Woman
13. Statutory Rape
14. Trafficking

1. BRIDE BURNING

See also EVIDENCE ACT, 1872, S. 32, (2006) 9 SCC 587

See also PENAL CODE, 1860 — 'Section 302 — Murder Trial' — Appreciation of evidence, S. 302, (2006) 3 SCC 161

2. COMPENSATION TO RAPE VICTIM

See CRIMINAL PROCEDURE CODE, 1973, S. 357, (2006) 3 SCC 771

3. DISCLOSURE OF NAMES OF VICTIMS

See also PENAL CODE, 1860, S. 228-A, (2006) 3 SCC 771, Ss. 228-A and 376, (2006) 9 SCC 787, 'Sections 375 and 376 — Rape' — Generally, Ss. 376 to 376-D, (2006) 3 SCC 771

4. DOWRY

See PENAL CODE, 1860, S. 304-B, (2006) 1 SCC 463

5. DOWRY DEATH

See PENAL CODE, 1860, S. 304-B, (2006) 10 SCC 115, Ss. 304-B, 306 and 498-A, (2006) 9 SCC 794

6. EVE TEASING

See PENAL CODE, 1860, S. 354, (2006) 8 SCC 560

7. GANG RAPE

See PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Common intention, S. 376(2)(g) Explanation 1, (2006) 10 SCC 608

8. KIDNAPPING

See PENAL CODE, 1860, S. 366, (2006) 8 SCC 560

9. RAPE

See PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Generally, S. 376, (2006) 3 SCC 771, 'Against her will' and 'without her consent', Ss. 375 and 376, (2006) 6 SCC 9, Appreciation of evidence, Ss. 376(2)(e) and 375, (2005) 13 SCC 398, Conviction on sole testimony of prosecutrix, S. 376, (2006) 9 SCC 787, Corroboration of evidence, S. 376, (2006) 3 SCC 771, Ingredients of rape, Ss. 376/511, 375 Expln., 366 and 354, (2006) 8 SCC 560, Injuries on prosecutrix, S. 376, (2006) 10 SCC 595, Sentence, S. 376, (2006) 3 SCC 771, S. 376 proviso, (2006) 5 SCC 736, Ss. 376(1) & (2) provisos, (2006) 6 SCC 1, S. 376(1) and proviso thereto, (2006) 4 SCC 347, S. 376(1) proviso, (2006) 9 SCC 589, Ss. 376(2) proviso & 376(2)(f), (2006) 3 SCC 771

— **Ingredients of rape** *See* WORDS AND PHRASES, (2006) 8 SCC 560

— **Medical examination** *See* PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Medical examination, S. 376, (2006) 10 SCC 531

— **Prosecution of a woman for** *See* PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Prosecution of a woman for rape, Ss. 375, 376(2)(g) & Expln. I, 34 and 110, (2006) 6 SCC 263

— **Sentence of period already undergone** *See* PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Sentence, S. 376/S. 354, (2006) 9 SCC 762

10. RAPE BY PERSONS IN POSITION OF AUTHORITY

See PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Conviction on sole testimony of prosecutrix, S. 376, (2006) 10 SCC 92, Rape by person in position of authority, S. 376, (2006) 10 SCC 531

11. RAPE OF MINORS

See CRIMINAL TRIAL — 'Sentence' — Sentence not reduced, (2006) 10 SCC 531

See also PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Appreciation of evidence, Ss. 375 and 376, (2006) 10 SCC 534, S. 376, (2006) 9 SCC 713, Sentence, S. 376(2)(f), (2006) 3 SCC 771, Statutory rape — Underage victim, Ss. 375, 376 and 366, (2006) 1 SCC 283

12. RAPE OF PREGNANT WOMAN

See PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Rape of a pregnant woman, S. 376(2)(e), (2006) 9 SCC 787

13. STATUTORY RAPE

See PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Statutory rape — Underage victim, S. 376 Sixthly, (2006) 5 SCC 736

14. TRAFFICKING

See CRIMINAL PROCEDURE CODE, 1973, Ss. 20(1), (2) & (5), (2006) 5 SCC 745

CRIMINAL LAW

1. GENERALLY

[152] — Crime detection — Scope of — Various steps involved in, enumerated — Delegable and non-delegable steps in, differentiated — *The authority responsible for each step, held (per curiam), is the officer in charge of the police station, though he might have delegated some steps — Criminal Procedure Code, 1973, Chs. XII, IV-A, V, VI and VII*

Under CrPC, investigation consists of proceeding to the spot, ascertainment of the facts and circumstances of the case, discovery and arrest of the suspected offender, collection of evidence and forma-

tion of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial, and if so, taking the necessary steps for the same by the filing of a charge-sheet under Section 173. The scheme of CrPC shows that while it is permissible for an officer in charge of a police station to depute some subordinate officer to conduct some of these steps in the investigation, the responsibility for each one of the above steps is that of the officer in charge of the police station. The final step in the investigation, namely, the formation of the opinion as to whether or not there is a case to place the accused on trial is to be of the officer in charge of the police station and this function cannot be delegated and can be performed by no other authority. The formation of the opinion of the police on the material collected during the investigation as to whether judicial scrutiny is warranted or not is entirely left to the officer in charge of the police station. There is no provision for delegation of the above function regarding formation of the opinion but only a provision entitling the superior officers to supervise or participate under Section 36 CrPC. (Paras 20, 21 and 31). *M.C. Mehta (Taj Corridor Scam)* v. *Union of India*, (2007) 1 SCC 110: (2007) 1 SCC (Cri) 264.

Bench Strength **3**. Coram: **S.B. Sinha**[2], **S.H. Kapadia**[1] and *D.K. Jain*[1], JJ. [Date of decision: 27-11-2006]

[153] — Criminal law enforcement — Scheme prevalent in India, sketched out — *Division of duties and areas of competence between executive and judiciary in respect of crime detection and crime punishment, respectively, explicated (per curiam)*

Per Kapadia, J. (for himself and Jain, J.) (Sinha, J. concurring)

There is a clear-cut and well-demarcated sphere of activities in the field of crime detection and crime punishment. Investigation of an offence is the field reserved for the executive through the Police Department, the superintendence over which vests in the State Government. The executive is charged with a duty to maintain vigilance over the law and order situation. It is obliged to prevent crime. If an offence is committed allegedly, it is the State's duty to investigate into the offence and bring the offender to book. Once it investigates through the Police Department and finds an offence having been committed, it is its duty to collect evidence for the purposes of proving the offence. Once that is completed, the investigating officer submits report to the court requesting the court to take cognizance of the offence under Section 190 CrPC and his duty comes to an end. (Para 26). *M.C. Mehta (Taj Corridor Scam)* v. *Union of India*, (2007) 1 SCC 110: (2007) 1 SCC (Cri) 264.

Bench Strength **3**. Coram: **S.B. Sinha**[2], **S.H. Kapadia**[1] and *D.K. Jain*[1], JJ. [Date of decision: 27-11-2006]

2. PARTICULAR STATUTES

Maharashtra Control of Organised Crimes Act, 1999 (30 of 1999)

[154] — Ss. 3(2) and 24 — Abetment, help or support of organised crime — Requirements of — *Necessity of evidence proving accused's direct role in commission of the organised crime — Insufficiency of merely establishing acquaintance of accused with kingpin of the organised crime in question — Penal Code, 1860, Ss. 107 and 108* (Para 16). *Chenna Boyanna Krishna Yadav* v. *State of Maharashtra*, (2007) 1 SCC 242: (2007) 1 SCC (Cri) 329.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **D.K. Jain**, JJ. [Date of decision: 8-12-2006]

[155] — S. 21(4) — Grant of bail in case of offences under MCOCA — *Cumulative conditions applicable, held, are (1) satisfaction of court that there are* ***reasonable grounds*** *for believing that accused is not guilty of the alleged offence, and (2) that he is not likely to commit any offence while on bail — Expression "reasonable grounds" — Import of — Held, the same means something more than prima facie grounds — It contemplates substantial probable causes for believing that accused is not guilty of the alleged offence — Recording of findings under S. 21(4) is a sine qua non for granting bail under MCOCA — Words and Phrases — "Reasonable grounds" — Distinguished from prima facie satisfaction*

As the provisions of the Maharashtra Control of Organised Crimes Act, 1999 ("MCOCA") have been invoked in the instant case in addition to the aforementioned broad principles, the limitations imposed in the provisions contained in Section 21(4) of MCOCA cannot be lost sight of while dealing with the application for grant of bail. (Para 12)

It is plain from a bare reading of the non obstante clause in Section 21(4) of MCOCA that the power to grant bail by the High Court or the Court of Session is not only subject to the limitations imposed by Section 439 CrPC but is also subject to the limitations placed by Section 21(4) of MCOCA. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression "reasonable grounds" means

something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provisions requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. Thus, recording of findings under the said provision is a *sine qua non* for granting bail under MCOCA. (Para 13)

At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the appellant has committed offences under Section 3(2) or Section 24 of MCOCA. What is to be seen is whether there is a reasonable ground for believing that the appellant is not guilty of the two offences he has been charged with, and further that he is not likely to commit an offence under MCOCA while on bail. As noted above, the circumstance which has weighed with the High Court to conclude that the appellant had the knowledge of the organised crime syndicate of Telgi, printing fake stamps, etc. and these were being sold under the protection of the appellant and hence he had abetted an organised crime, is the alleged conversation between the appellant and Telgi in January 1998, after the kidnapping incident. The alleged conversation may show the appellant's acquaintance with Telgi but may not *per se* be sufficient to prove the appellant's direct role with the commission of an organised crime by Telgi, to bring home an offence of abetment in the commission of organised crime falling within the ambit of Section 3(2) of MCOCA and/or within the purview of Section 24 of MCOCA. It is true that when the gravity of the offence alleged is severe, mere period of incarceration or the fact that the trial is not likely to be concluded in the near future either by itself or conjointly may not entitle the accused to be enlarged on bail. Nevertheless, both these factors may also be taken into consideration while deciding the question of grant of bail. (Para 16)

Having regard to the aforementioned circumstances, particularly the role attributed to the appellant in the charge-sheet, it is a fit case for grant of bail to the appellant. (Para 17)

It is directed that the appellant shall be enlarged on bail on his furnishing a personal bond in the sum of Rs 5 lakhs with two sureties, each in the like amount to the satisfaction of the Special Court, Pune. He shall also remain bound by all the conditions as stipulated in Section 438(2) CrPC. The appellant shall also surrender his passport, if any, before the Special Court. (Para 18). *Chenna Boyanna Krishna Yadav* v. *State of Maharashtra*, (2007) 1 SCC 242: (2007) 1 SCC (Cri) 329.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **D.K. Jain**, JJ. [Date of decision: 8-12-2006]

Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294: 2005 SCC (Cri) 1057, followed

CRIMINAL PROCEDURE CODE, 1898

— Ss. 190, 193 and 206 *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 190 and 193, (2006) 7 SCC 296

— Ss. 380 and 562 to 564 *See* PROBATION OF OFFENDERS — 'Probation of Offenders Act, 1958', S. 4, (2006) 6 SCC 159

— S. 429 *See* CRIMINAL PROCEDURE CODE, 1973, S. 392, (2006) 2 SCC 450

— S. 431 *See* CRIMINAL PROCEDURE CODE, 1973, S. 394, (2006) 5 SCC 683

— S. 495 *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 256 and 302, (2006) 5 SCC 530

— S. 528(6) *See* EVIDENCE ACT, 1872, S. 24, (2006) 1 SCC 714

CRIMINAL PROCEDURE CODE, 1973

[156] — Nature — An exhaustive code — *Provides complete and corrective machinery*

The Code of Criminal Procedure is an exhaustive code providing a complete machinery to investigate and try cases, appeals against the judgments. It has provisions at each stage to correct errors, failures of justice and abuse of process under the supervision and superintendence of the High Court as would be evident from the following:

(*i*) The Court has the power to direct investigation in cognizable cases under Section 156(3) read with Section 190 CrPC.

(*ii*) A Magistrate can postpone the issue of process and inquire into the case himself under Section 202(1) CrPC.

(*iii*) When a charge-sheet is filed, the court can refuse to accept the same and proceed to take cognizance of the offence on the basis of the materials on record. The court can direct further investigation into the matter.

(*iv*) The Magistrate may treat a protest petition as a complaint and proceed to deal therewith in terms of Chapter XV CrPC.

(*v*) Once the case is committed, the Sessions Judge may refer the matter to the High Court.

(*vi*) In the event, without taking any further evidence, it is found that while passing the order of commitment, the Magistrate has committed an error in not referring the case of an accused or left out an accused after evidence is adduced, the court may proceed against a person who was not an accused provided it appears from the evidence that he should be tried with the accused.

(*vii*) The Revisional Court during pendency of the trial may exercise its revisional jurisdiction under

Section 397 in which case, it may direct further inquiry in terms of Section 398 CrPC.

(*viii*) The revisional powers of the High Court and the Sessions Court are pointed out in the Code separately; from a perusal whereof it would appear that the High Court exercises larger power.

(*ix*) In the event of any conviction by a Court of Session, an appeal thereagainst would lie to the High Court. The appellate court exercises the power laid down under Section 386 CrPC in which event it may also take further evidence or direct it to be taken in terms of Section 391 thereof.

(*x*) The High Court has inherent power under Section 482 CrPC to correct errors of the courts below and pass such orders as may be necessary to do justice to the parties and/or to prevent the abuse of process of court. (Para 21). *Popular Muthiah* v. *State*, (2006) 7 SCC 296: (2006) 3 SCC (Cri) 245.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 4-7-2006]

— **S. 1** *See* Ss. 9, 13 and 1

— **S. 2** *See* Ss. 28 and 2

See also Ss. 30, 28 and 2

[157] — S. 2(d) — Complaint — Format for — *Held, there is no particular format for a complaint — Nomenclature is also inconsequential — A petition addressed to the Magistrate containing an allegation that an offence has been committed, and ending with a prayer that the culprits be suitably dealt with, as in the instant case, is a complaint* (Paras 15 and 16). *Mohd. Yousuf* v. *Afaq Jahan*, (2006) 1 SCC 627: (2006) 1 SCC (Cri) 460: AIR 2006 SC 705: (2006) 1 KLT 939: (2006) 2 Guj LR 1742: 2006 Cri LJ 788.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 2-1-2006]

— **S. 7** *See* Ss. 7 and 9

— **Ss. 7 and 9** *See* PREVENTION OF CORRUPTION ACT, 1988, S. 4, (2007) 1 SCC 1

— **Ss. 9, 13 and 18 — Fodder Scam cases — Appointment of Special Judge in — Interference by Supreme Court** *See* CONSTITUTION OF INDIA — 'Article 32' — Public Interest Litigation/PIL, Arts. 32, 233 and 235, (2006) 6 SCC 613; Arts. 233, 235 and 14, (2006) 6 SCC 613

— **S. 13** *See also* Ss. 9, 13 and 18

— **S. 15** *See* Ss. 154 and 15

— **S. 16** *See* Ss. 40, 162 and 16

See also Ss. 156, 157 and 16

— **S. 18** *See* Ss. 9, 13 and 18

— **S. 20** *See* Ss. 154, 156, 190, 200 and 20

See also Ss. 482 and 20

[158] — Ss. 20(1), (2) & (5) — Executive Magistrate — State Govt. has first to appoint a person as Executive Magistrate and then only he can be appointed as Addl. DM or DM — *Words "as many persons" in sub-section (1) include Commissioner of Police and as such State Govt. can appoint a Commissioner of Police in a metropolitan area as an Executive Magistrate — Reading sub-sections (1), (2) and (3) in conjunction, held, State Govt. has power to appoint the Commissioner of Police of Brihan Mumbai, which is a metropolitan area, as an Executive Magistrate and further appoint him as an Addl. DM, who shall have powers of a DM for the purposes of Ss. 18 and 20 of Immoral Traffic (Prevention) Act — Immoral Traffic (Prevention) Act, 1956, Ss. 18 and 20 — Crimes against women and children — Trafficking*

When an expression is capable of more than one meaning, the court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the great consequences of the alternative constructions. (Para 23). *A.N. Roy* v. *Suresh Sham Singh*, (2006) 5 SCC 745: (2006) 3 SCC (Cri) 75: AIR 2006 SC 2677.

Bench Strength **2**. Coram: **H.K. Sema** and *A.K. Mathur*, JJ. [Date of decision: 4-7-2006]

— **S. 20(2)** *See* Ss. 20(1), (2) and (5)

— **S. 20(5)** *See* Ss. 20(1), (2) and (5)

— **S. 24** *See also* Ss. 24 and 24-A

See also Ss. 170, 173, 36 and 24

See also Ss. 231 and 24

[159] — S. 24 — Role of Public Prosecutor — Scope — *Held (per curiam), the same is restricted to conducting or withdrawal of any prosecution, appeal or other proceedings in court — It does not include the field of investigation*

A Public Prosecutor is appointed, as indicated in Section 24 CrPC, for conducting any prosecution, appeal or other proceedings in the court. He has also the power to withdraw any case from the prosecution with the consent of the court. He is the officer of the court. Thus the Public Prosecutor is to deal with a different field in the administration of justice and he is not involved in investigation. It is not the scheme of CrPC for supporting or sponsoring any combined operation between the investigating officer and the Public Prosecutor for filing the report in the court. (Para 29). *M.C. Mehta (Taj Corridor Scam)* v. *Union of India*, (2007) 1 SCC 110: (2007) 1 SCC (Cri) 264.

Bench Strength **3**. Coram: **S.B. Sinha**[2], **S.H. Kapadia**[1] and *D.K. Jain*[1], JJ. [Date of decision: 27-11-2006]

R. Sarala v. *T.S. Velu, (2000) 4 SCC 459: 2000 SCC (Cri) 823, followed*

— **Ss. 24 and 24-A** *See* CONSTITUTION OF INDIA — 'Article 32' — Public Interest Litigation/PIL, Art. 32, (2006) 6 SCC 613

— **S. 24-A** *See* Ss. 24 and 24-A

— **S. 25-A** *See* Ss. 24 and 25-A

— **S. 28** *See* Ss. 30, 28 and 2

— **Ss. 28 and 29** *See* CRIMINAL TRIAL — 'Sentence' — Generally, (2006) 2 SCC 359, Reduction of sentence, (2006) 7 SCC 414, (2006) 2 SCC 359

— **Ss. 30, 28 and 29** *See* NEGOTIABLE INSTRUMENTS ACT, 1881, S. 138, (2006) 9 SCC 165

— **S. 36** *See* Ss. 170, 173, 36 and 24
See also Ss. 360 and 36

— **S. 38** *See* Ss. 205, 206 and 38
See also Ss. 374 and 38

— **S. 39** *See* Ss. 344, 311 and 39

— **S. 40** *See also* Ss. 482 and 40

— **Ss. 40, 162 and 164** *See* EVIDENCE ACT, 1872, S. 24, (2006) 1 SCC 714

— **S. 41(a)** *See* Ss. 154 and 41(a) and (g)

— **S. 41(g)** *See* Ss. 154 and 41(a) and (g)

— **S. 43** *See* Ss. 439 and 43

— **S. 120-B** *See* Ss. 197 and 420, 467, 468, 471 and 120-B

— **S. 125** *See* Ss. 438 and 125

[160] — Ss. 145 and 482 — Abuse of process of court — Rights of the parties in respect of the property in question settled by a compromise decree passed by civil court during pendency of civil proceedings inter-partes — *Inspite of civil proceedings having achieved finality, proceedings under S. 145 CrPC initiated — Proceedings under S. 145 CrPC, held, an abuse of process of court — If any party claims to be in possession and seeks its protection, it is for that party to approach the civil court and get an appropriate order — Proceedings under S. 145 CrPC cannot be allowed to continue — High Court not justified in rejecting appellant's petition under S. 482 for quashing the proceedings under S. 145 CrPC. Kunjbihari* v. *Balram*, (2006) 11 SCC 66: (2007) 1 SCC (Cri) 376.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and *G.P. Mathur* and *P.K. Balasubramanyan*, JJ. [Date of decision: 26-10-2005]

— Chs. XII, IV-A, V, VI and VII — Crime detection — Scope of — Various steps involved in, enumerated *See* CRIMINAL LAW — 'Generally', (2007) 1 SCC 110

SECTION 154 — FIR

— **S. 154** *See* Ss. 482, 156(3) and 154
See also CONSTITUTION OF INDIA, Art. 142

Synopsis

(a) Generally
(b) Contents of FIR
(c) Delay in lodging/filing FIR
(d) Discrepancies/Omissions in FIR
(e) Duty of police officer

(a) Generally

[161] — S. 154 — FIR — Generally — Fifteen persons named in FIR while 39 persons put on trial — *Held, though the FIR need not contain all the details, but in a case of this nature it is expected that the incident would be narrated in some detail as otherwise it will be difficult for the trial Judge to find out the truth particularly having regard to the fact that both the PWs made omnibus statements — PW 1 undoubtedly made improvements in his deposition before the court and attributed overt acts not only to those who were allegedly responsible for causing the death of Deceased 1 but also who had allegedly caused the death of Deceased 2 — If he was an eyewitness and had seen the entire occurrence from a close proximity and indeed suffered an injury himself, there was no reason as to why the first information report would lack the details of the offence involving all the accused persons* (Para 16). *Sabbi Mallesu* v. *State of A.P.*, (2006) 10 SCC 543: (2007) 1 SCC (Cri) 142: AIR 2006 SC 2747: 2006 Cri LJ 4038.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 12-7-2006]

[162] — S. 154 — FIR — Refusal to register FIR — Interference in writ proceedings — When warranted — *On writ appeal to High Court, High Court refusing to interfere on the ground of the availability of an alternative remedy — Held, availability of alternative remedy or pendency of contempt petition in court in the matter concerned could not be a ground therefor* (Para 3). *Ramesh Kumari* v. *State (NCT of Delhi)*, (2006) 2 SCC 677: (2006) 1 SCC (Cri) 678: AIR 2006 SC 1322: 2006 Cri LJ 1622: (2006) 127 DLT 636: (2006) 2 KLT 404.

Bench Strength **2**. Coram: **H.K. Sema** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 21-2-2006]

[163] — S. 154 — FIR — Registration of — Duty of police to register FIR — Genuineness of case — Relevance of, at the time of registration of FIR — *Held, provision of S. 154 is mandatory — Hence, the police officer concerned is duty-bound to register the case on receiving information disclosing cognizable offence — Genuineness or credibility of the information is not a condition precedent for registration of a case — That can only be considered after registration of the case* (Paras 5 and 3). *Ramesh Kumari* v. *State (NCT of Delhi)*, (2006) 2 SCC 677: (2006) 1 SCC (Cri) 678: AIR 2006 SC 1322: 2006 Cri LJ 1622: (2006) 127 DLT 636: (2006) 2 KLT 404.

Bench Strength **2**. Coram: **H.K. Sema** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 21-2-2006]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

— Ss. 154 and 156 *See* CONSTITUTION OF INDIA — 'Article 226' — Scope of interference — Interference in criminal matters — Investigation, Art. 226, (2006) 10 SCC 473

[164] — S. 154 and S. 156(3) — FIR — Generally — Effect of filing of — Duty of police to register FIR in case S. 156(3) is attracted — *Held, registration of an FIR involves only the process of entering the*

substance of the information relating to commission of the cognizable offence in a book kept by the officer in charge of the police station — Further held, it is the duty of the officer in charge of the police station to register an FIR when investigation under S. 156(3) is directed by the Magistrate, even when the Magistrate explicitly does not say so

Any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) CrPC. But if he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) CrPC that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII CrPC only thereafter. (Para 11). *Mohd. Yousuf* v. *Afaq Jahan*, (2006) 1 SCC 627: (2006) 1 SCC (Cri) 460: AIR 2006 SC 705: (2006) 1 KLT 939: (2006) 2 Guj LR 1742: 2006 Cri LJ 788.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 2-1-2006]

— Ss. 154, 156, 190, 200 and 203 *See* CONSTITUTION OF INDIA — 'Article 32' — Scope of Interference — Interference in criminal matters — CBI Enquiry, Art. 32, (2006) 5 SCC 733

[165] — Ss. 154, 156, 190 and 200 to 203 — Information to police regarding commission of cognizable offence — No action taken by police — Course open to complainant — *Held, in such a case, complainant is given power under S. 190 read with S. 200 CrPC to lay down the complaint before the Magistrate concerned — Then the Magistrate is required to enquire into the complaint as provided in Ch. XV CrPC — Writ petition in such a case, held, not maintainable*

When the information is laid with the police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Criminal Procedure Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. A writ petition in such cases is not to be entertained. (Para 16). *Minu Kumari* v. *State of Bihar*, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310: AIR 2006 SC 1937: 2006 Cri LJ 2468: (2006) 2 KLT 588: (2006) 3 Guj LR 2013.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-4-2006]

(b) Contents of FIR

[166] — S. 154 — FIR — Absence of details — Submission that non-mention about the source of light in FIR for identification of accused was fatal to prosecution — *Held, FIR is not an encyclopaedia of facts concerning the crime and hence non-mention about the source of light therein was inconsequential — Not necessary that minutest details should be stated in FIR — For lodging the FIR, in a criminal case and more particularly in a murder case, the stress must be on prompt lodging of the FIR and it is sufficient if a broad picture is presented and the FIR contains broad features* (Para 18). *S. Sudershan Reddy* v. *State of A.P.*, (2006) 10 SCC 163: (2006) 3 SCC (Cri) 503: AIR 2006 SC 2716: 2006 Cri LJ 4033.

Bench Strength **2**. Coram: **Arijit Pasayat** and *R.V. Raveendran*, JJ. [Date of decision: 20-7-2006]

Bollavaram Pedda Narsi Reddy v. State of A.P., (1991) 3 SCC 434: 1991 SCC (Cri) 586, distinguished on facts

(c) Delay in lodging/filing FIR

[167] — S. 154 — Delay in filing FIR — Effect on credibility of prosecution case — *Held, by itself cannot be a ground to doubt the prosecution case and discard it — It would put the court on its guard to search if any plausible explanation has been offered and if offered whether it is satisfactory — Father of the deceased finding the dead body of his daughter at 1 p.m. on 8-9-1990, yet lodging the FIR on 9-9-1990 at 7.30 p.m. — Explanation offered being that he was shocked and mentally unfit to lodge the complaint, found sufficient and satisfactory by the courts below — Held, after finding his newly wedded daughter's dead body in her matrimonial home, where he had left her just a day before, it was very natural for the father to lose his tranquillity of mind — Hence if such grief-stricken father had told the police that he would give the complaint afterwards, it was not unnatural or unusual — Besides, there was no reason to falsely*

(c) Delay in lodging/filing FIR *(contd.)*

implicate the accused-appellants, nor any allegation that his daughter was murdered were made in the complaint which contained only narration of facts of the harassment meted out to the deceased — Hence, simply because of the delay it cannot be said that the allegations in the FIR are unworthy of credence or that the accused-appellants had been falsely implicated. Sahebrao v. *State of Maharashtra*, (2006) 9 SCC 794: (2006) 3 SCC (Cri) 408: AIR 2006 SC 2002: 2006 Cri LJ 2881.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.P. Naolekar**, JJ. [Date of decision: 3-5-2006]

[168] — S. 154 — Delay in filing FIR — *In sexual offences, held, delay in lodging the first information report cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same — Delay has the effect of putting the court on guard to search if any explanation has been offered for the delay and, if offered, whether it is satisfactory* (Para 6). *Dildar Singh* v. *State of Punjab*, (2006) 10 SCC 531: (2007) 1 SCC (Cri) 129: AIR 2006 SC 3084: 2006 Cri LJ 3914.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 20-7-2006]

[169] — S. 154 — FIR — Delay of 4 hours in lodging FIR — Effect — *Complainant, a police official — Police station at about 50 yards from place of occurrence — Telephone services available — On these facts, delay in lodging FIR raised doubt as to prosecution case — Prevention of Corruption Act, 1988, S. 12*

The offence took place around 7 o' clock in the morning. The trial court noticed that the first information report was recorded around 11 o'clock and it reached the Court of the Chief Judicial Magistrate after three-and-a-half hours. The police station was about 50 yards away from the police lines where PW 2 used to reside. Further, the telephone services were available both at the civil lines as also the police station. No attempt was made by PW 2 to inform the SHO of the police station immediately. The first information report was admittedly lodged after a long delay. Having regard to the distance of the police station as well as the CIA Office, it could not be understood as to why the DSP could come to the place of occurrence only at about 11.30 a.m. and why he remained at the spot for about three hours. (Paras 17 and 14). *Om Parkash* v. *State of Haryana*, (2006) 2 SCC 250: (2006) 1 SCC (Cri) 493: AIR 2006 SC 894: 2006 Cri LJ 972.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 17-1-2006]

(2005) 4 RCR 895 (P&H), reversed

[170] — Ss. 154 and 157 — FIR — Delay in forwarding FIR to Magistrate — Explanation if satisfactory — *FIR lodged at 0025 hours on 13-4-1992 received by the Judicial Magistrate only on 18-4-1992 — Only explanation offered was that the same was sent through a Circle Officer and not directly — No explanation as to why the Circle Officer of the rank of DSP did not act responsibly — Statement of V who had accompanied PW 1 (complainant) to lodge FIR not recorded by the IO and provisions contained in U.P. Police Regulations not complied with — Held, finding of the trial court that there was possibility of FIR being ante-timed sustainable since although the number of FIR was mentioned other details were lacking — Police — U.P. Police Regulations — Regns. 97, 108 and 109* (Paras 14, 15, 16 and 18 to 24). *Budh Singh* v. *State of U.P.*, (2006) 9 SCC 731: (2006) 3 SCC (Cri) 377: AIR 2006 SC 2500: 2006 Cri LJ 2886.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 12-5-2006]

Meharaj Singh v. State of U.P., (1994) 5 SCC 188: 1994 SCC (Cri) 1391, held distinguished

(d) Discrepancies/Omissions in FIR

[171] — S. 154 — FIR — Discrepancies or omissions in FIR — Effect — *Held, merely because of some contradiction it cannot be said that the FIR was lodged later and that the police had prior information and the same was not recorded — When a witness is examined after a long period it is possible that some mistakes may occur when they give evidence before the court* (Para 10). *Gonchi Rajashekhar Reddy* v. *State of A.P.*, (2006) 9 SCC 535: (2006) 3 SCC (Cri) 332: 2006 Cri LJ 2378.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *Arun Kumar*, JJ. [Date of decision: 3-4-2006]

(e) Duty of police officer

[172] — Ss. 154 and 41(a) & (g) — Recording FIR/Registration of case disclosing a cognizable offence — Duty of police officer in charge of a police station — Discretion, if any, available to such officer in registering a case — Position compared with that obtaining under Ss. 41(a) & (g) — Remedy against non-registration — *Held, police officer concerned cannot embark upon an enquiry as to whether the information laid by the informant is reliable and genuine and refuse to register a case on the ground that the information is not reliable or credible — The officer is statutorily obliged to register a case — "Reasonableness" or "credibility" of the information is not a condition precedent for registration of a case — The condition which is sine qua non for recording FIR is that there must be information*

and that information must disclose a cognizable offence — If the officer refuses to register a case, the remedy lies under S. 154(3)

At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) CrPC, the police officer concerned cannot embark upon an enquiry as to whether the information laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 CrPC to investigate, subject to the proviso to Section 157 thereof. In case an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 CrPC. (Para 66)

It has to be noted that in Section 154(1) CrPC, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in Sections 41(1)(*a*) or (*g*) of the Code wherein the expressions "reasonable complaint" and "credible information" are used. Evidently, the non-qualification of the word "information" in Section 154(1) unlike in Sections 41(1)(*a*) and (*g*) CrPC may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. "Reasonableness" or "credibility" of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. The condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence. (Para 67)

It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) CrPC, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. (Para 68). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

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[173] — Ss. 155 to 157 — Investigation by police — Powers of, in respect of cognizable and non-cognizable offences — Police when obliged to investigate an offence — *Held, obligation to register a case is not to be confused with the remedy if the same is not registered — Registration of a case does not ipso facto warrant the setting in motion of an investigation, as the same is subject to discretion of police subject to Ss. 157(1) proviso & 157(2) in case of cognizable offences, and scheme of S. 155 in case of non-cognizable offences — S. 156(3) vests a discretionary power on a Magistrate empowered under S. 190 to order an investigation by a police officer as contemplated in S. 156(1)*

In this connection, it may be noted that though a police officer cannot investigate a non-cognizable offence on his own as in the case of cognizable offence, he can investigate a non-cognizable offence under the order of a Magistrate having power to try such non-cognizable case or commit the same for trial within the terms under Section 155(2) CrPC but subject to Section 155(3) CrPC. Further, under Section 155(4), where a case relates to two offences to which at least one is cognizable, the case shall be deemed to be a cognizable case notwithstanding that the other offences are non-cognizable and, therefore, under such circumstances the police officer can investigate such offences with the same powers as he has while investigating a cognizable offence. (Para 69)

The obligation to register a case is not to be confused with the remedy if same is not registered. The answer to the question whether the registration of a criminal case under Section 154(1) CrPC ipso facto warrants the setting in motion of an investigation under Chapter XII CrPC is provided by Sections 157(1) proviso and 157(2) CrPC. Section 156(3) vests a discretionary power on a Magistrate empowered under Section 190 to order an investigation by a police officer as contemplated in Section 156(1). Section 156(3) does not empower a Magistrate to stop an investigation undertaken by the police. (Paras 70, 71 and 73). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

[174] — Ss. 155 to 157 and 190 — Investigation by police and cognizance by Magistrate — Grounds for — Effect of complaint having been filed by political opponent — Effect of actuation by malice — *Held, merely because a political opponent was the complainant does not per se lead to an inference that the complaint has to be thrown out — If the use of the power is for fulfilment of a legitimate object, the actuation or catalysation by malice is not fatal — The ultimate test is whether the allegations have any substance*

So far as the allegation that a political opponent had lodged the complaint is concerned, that itself is not sufficient for the court to interfere. When the allegation is made, investigation is undertaken to find out whether there is any substance in the allegation. Merely because the political opponent was the complainant that does not per se lead to an inference that the complaint has to be thrown out or that no notice should be taken thereof. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The ultimate test, therefore, is whether the allegations have any substance. An investigation should not be shut out at the threshold because a political opponent or a person with political difference raises an allegation of commission of offence. Therefore, the plea of mala fides as raised cannot be maintained. (Paras 62, 72 and 74). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

[175] — Ss. 155 to 157 and 190 — Investigation by police and cognizance by Magistrate — Grounds for — Effect of complaint having been filed by political opponent — Effect of actuation by malice — *Held, reiterating the view taken in* Parkash Singh Badal case, *(2007) 1 SCC 1, even though there may be an element of personal or political rivalry, it is not the credibility of the person who makes the allegations but the existence of materials necessitating investigation which is relevant — However, in light of certain materials not having been before High Court, High Court directed to consider the matter relating to plea of mala fides, for which parties permitted to place relevant materials on record* (Paras 5 and 11). *K. Karunakaran* v. *State of Kerala*, (2007) 1 SCC 59: (2007) 1 SCC (Cri) 251.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

R.S. Nayak v. A.R. Antulay, (1984) 2 SCC 183: 1984 SCC (Cri) 172; Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1, followed

— **S. 156** *See also* Ss. 154, 156, 190, 200 and 203
See also Ss. 154, 156, 190 and 200 to 203
See also Ss. 157 and 156
See also Ss. 482, 156 and 173
— **Ss. 156, 157 & 161** *See* CRIMINAL TRIAL — 'Investigation', (2006) 7 SCC 172

[176] — Ss. 156 and 202 — Investigation envisaged under — Difference between, discussed

An application was filed by the appellant before the CJM alleging that the accused with the help of the Bank Manager had forged his signature in the documents showing him as a guarantor. The CJM directed the police to register the FIR and to investigate the case. After investigation charge-sheet was filed by the police. Respondent 1 filed an application under Section 482 CrPC for quashing the FIR, the charge-sheet and the order of the Magistrate by which he had taken cognizance, and the order directing the police to investigate the case under Section 156(3) CrPC. By the impugned order the High Court quashed the charge-sheet on the ground that the Magistrate had no power to order registration of the case. Hence the present appeal.

Allowing the appeal,

Held :

Any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) CrPC. But if he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) CrPC that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII CrPC only thereafter. (Para 11)

The investigation started thereafter can end up only with the report filed by the police as indicated in Section 173 CrPC. The investigation contemplated in Chapter XII can be commenced by the police even without the order of a Magistrate. But that does not mean that when a Magistrate orders an investigation under Section 156(3) it would be a different kind of investigation. Such investigation must also end up

only with the report contemplated in Section 173 CrPC. But the significant point to be noticed is, when a Magistrate orders investigation under Chapter XII he does so before he takes cognizance of the offence. (Para 8)

But a Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV CrPC. A reading of Section 202(1) CrPC makes the position clear that the investigation referred to therein is of a limited nature. The Magistrate can direct such an investigation to be made either by a police officer or by any other person. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further. This is because he has already taken cognizance of the offence disclosed in the complaint, and the domain of the case would thereafter vest with him. (Paras 9 and 10)

Chapter XII of the Code contains provisions relating to "information to the police and their powers to investigate", whereas Chapter XV, which contains Section 202, deals with provisions relating to the steps which a Magistrate has to adopt while and after taking cognizance of any offence on a complaint. Provisions of the above two chapters deal with two different facets altogether, though there could be a common factor i.e. complaint filed by a person. Section 156, falling within Chapter XII deals with powers of the police officers to investigate cognizable offences. True, Section 202, which falls under Chapter XV, also refers to the power of a Magistrate to "direct an investigation by a police officer". But the investigation envisaged in Section 202 is different from the investigation contemplated in Section 156 of the Code. (Para 7). *Mohd. Yousuf* v. *Afaq Jahan*, (2006) 1 SCC 627: (2006) 1 SCC (Cri) 460: AIR 2006 SC 705: (2006) 1 KLT 939: (2006) 2 Guj LR 1742: 2006 Cri LJ 788.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 2-1-2006]

Gopal Das Sindhi v. State of Assam, AIR 1961 SC 986: (1961) 2 Cri LJ 39; Narayandas Bhagwandas Madhavdas v. State of W.B., (1960) 1 SCR 93: AIR 1959 SC 1118: 1959 Cri LJ 1368, considered

— S. 156(3) *See also* S. 154 and S. 156(3)

See also Ss. 482, 156(3) and 154

[177] — S. 156(3) — Scope of power of Magistrate under, in respect of investigations — *Held, S. 156(3) does not empower a Magistrate to stop an investigation undertaken by the police* (Para 71). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

— S. 157 *See also* Ss. 154 and 157

See also Ss. 156, 157 and 161

See also Ss. 155 to 157 and 190

See also Ss. 190, 200 and 157

[178] — S. 157 — Delay in sending copy of FIR to Magistrate — If made out — Need for sending copy to residence of Magistrate — *Occurrence took place at 6 a.m., FIR lodged at 7.20 p.m. and copy thereof received by the Magistrate in court next day at 12.45 p.m. — Definite stand taken by prosecution that there was no practice prevalent in the area for sending the report to the residence of the Magistrate — Held, no adverse inference should be drawn for not sending the report at the residence of the Magistrate on the same night of the occurrence — Copy of FIR was sent at the earliest on the next day in court and there was no delay much less inordinate delay in sending the same to Magistrate*

Mere delay in sending the first information report to a Magistrate cannot be a ground to throw out the prosecution case if the evidence adduced is otherwise found to be credible and trustworthy. (Para 11). *State of J&K* v. *S. Mohan Singh*, (2006) 9 SCC 272: (2006) 2 SCC (Cri) 484: AIR 2006 SC 1410: 2006 Cri LJ 1691.

Bench Strength **2**. Coram: **B.N. Agrawal** and *A.K. Mathur*, JJ. [Date of decision: 9-3-2006]

[179] — S. 157 — Investigation — Stay of — Issuance of show-cause notice to investigating agencies by High Court — Effect — *Held, issuance of show-cause notice does not necessarily mean that further investigation cannot be done. Directorate of Enforcement* v. *Guru Swarup Srivastava*, (2006) 6 SCC 350: (2006) 3 SCC (Cri) 211.

Bench Strength **2**. Coram: *Arijit Pasayat* and *Altamas Kabir*, JJ. [Date of decision: 14-6-2006]

[180] — S. 157 — Mere delay in lodging FIR and further delay in sending the same to Magistrate concerned would not always be fatal to the prosecution case — *But such delay is a material circumstance to be taken into consideration while appreciating evidence on record — Having regard to reliable evidence led by prosecution, held, delay in forwarding FIR to Magistrate would not dislodge the prosecution case*

It was urged that the delay in lodging the FIR and thereafter further delay in forwarding the same to the Magistrate concerned would lead to the conclusion that the FIR had been recorded much later than the one as shown in the document and as such the very genesis of the prosecution case belies and cannot be relied upon to convict the accused-appellants.

Held :

Section 157 CrPC requires sending of an FIR to the Magistrate forthwith which reaches promptly and without undue delay. The reason is obvious to avoid any possibility of improvement in the prosecution story and also to enable the Magistrate to have a watch on the progress of the investigation. At the same time, this lacuna on the part of the prosecution would not be the sole basis for throwing out the entire prosecution case being fabricated if the prosecution had produced the reliable evidence to prove the guilt of the accused persons. The provisions of Section 157 CrPC are for the purpose of having a fair trial without there being any chance of fabrication or introduction of the fact at the subsequent stage of investigation. The cases cited by the learned counsel for the appellants do not lay down any law that simply because there is a delay in lodging the FIR or sending it to the Magistrate forthwith, the entire case of the prosecution has to be discarded. The decisions rendered by this Court and relied upon by the learned counsel for the appellant would only show that this will be a material circumstance which will be taken into consideration while appreciating the evidence on record. Having regard to the material on record, it must be held that the prosecution has led reliable evidence, the veracity of which is not dislodged by delay in recording of the FIR and delay in sending the same to the Magistrate in the facts and circumstances of this case. At best it can be taken to be an infirmity in investigation. (Paras 19 and 20). *Rabindra Mahto* v. *State of Jharkhand*, (2006) 10 SCC 432: (2006) 3 SCC (Cri) 592: AIR 2006 SC 887: 2006 Cri LJ 957: (2006) 1 KLJ 431.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.P. Naolekar**, JJ. [Date of decision: 6-1-2006]

[181] — Ss. 157 and 156 — Role of the IO — Deprecated — *SI refusing to register the offence — Investigation defective and casual — Statements recorded by him cryptic and favourable to the accused — He not even ascertaining the age of the victim — Circumstances suggesting that SI deliberately refused to register the offence in order to help the accused at the cost of prosecutrix — His conduct deprecated and commented upon by trial court and the High Court — Supreme Court while expressing shock at his behaviour observing that conduct of the SI in not registering a grievous offence like rape, despite the fact that the prosecutrix had categorically stated that the accused had forcible sexual intercourse with her, would lead to the losing of confidence of the public in the police establishment* (Paras 6, 26 and 27). *Vishnu* v. *State of Maharashtra*, (2006) 1 SCC 283: (2006) 1 SCC (Cri) 217: AIR 2006 SC 508: 2006 Cri LJ 303.

Bench Strength **2**. Coram: **H.K. Sema** and *Tarun Chatterjee*, JJ. [Date of decision: 24-11-2005]

— S. 161 — Interrogation — Third-degree methods — Use of, by police during interrogation — Reasons behind such practice — Tackling of custodial violence — Improvements to be made and measures to be taken for *See* CONSTITUTION OF INDIA — 'Article 21' — Custodial death/violence, Art. 21, (2006) 3 SCC 178

— S. 162 *See* Ss. 40, 162 and 16

[182] — S. 164 — Statement under, of co-accused/accomplice — Use of, against accused — *Held, the court cannot start with the confession of a co-accused and must begin with other evidence adduced by the prosecution — But the court can use confession of co-accused to lend support or assurance to the conclusion of guilt which the court is about to reach on the other evidence — In the present case, the statements of PWs 11 and 15 under S. 164 were not the only evidence on which reliance was placed — Those statements were used more as a corroboration — Further, PWs 11 and 15 were not "co-accused" or "accomplices" or "abettors" — Hence, contention that their said statements could not be used as evidence against accused, held on facts, misleading — Evidence Act, 1872, S. 30* (Para 25). *R. Janakiraman* v. *State*, (2006) 1 SCC 697: (2006) 1 SCC (Cri) 442: AIR 2006 SC 1106.

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 4-1-2006]

— S. 167(2) proviso (a)(i) *See also* Ss. 173(2) and 167(2) proviso (a)(i)

[183] — S. 167(2) proviso (a) — Applicability to offence under S. 304-B IPC — *Held, in a case involving offence under S. 304-B IPC, period of remand would be 90 days under cl. (i) and not 60 days under cl. (ii) of the proviso — S. 304-B(2) IPC provides for minimum punishment of 7 years and maximum punishment of imprisonment for life and it is for the court to decide what would be the adequate punishment in facts and circumstances of the case — It can impose punishment of imprisonment for life as well and merely because minimum sentence is provided, it does not mean that only that is imposable — Word "punishable" in proviso (a)(i) means liable to be punished or may be punished and not must be punished — Words and phrases — "Punishable" — Meaning*

The first information report was lodged by the respondent against the appellants on the allegation of commission of murder of wife of Appellant 1. Appellants 1 and 2 were arrested on 5-8-2004 while Appellant 3 was arrested on 7-8-2004 for alleged commission of offence under Section 304-B IPC. The challan was filed on 30-10-2004 and the trial court passed an order to the effect that the Ahlmad was to check and report. The Ahlmad examined the challan and noted: "Challan checked and found that negatives of the three photographs are not attached therewith."

The negatives were filed on 1-11-2004 and it was indicated that "challan checked, found correct".

A prayer for bail was made before Judicial Magistrate on 4-11-2004 on the ground that since challan was not filed in time they were entitled to bail in terms of Section 167(2) proviso (*a*)(*ii*) CrPC. The Magistrate rejected the application stating that the challan was presented in the court prior to the completion of 90 days and, therefore, it was presented within the prescribed period. The order was challenged before the Sessions Judge who granted bail, holding that in relation to Section 304-B IPC period of 60 days of remand and not 90 days of remand would be applicable for the purpose of Section 167(2)(*a*)(*ii*). The High Court in revision petition filed by the respondent held that the period during which the challan had to be filed was 90 days under proviso (*a*)(*i*) and not 60 days under proviso (*a*)(*ii*) to Section 167(2) CrPC. Therefore, the order granting bail was set aside.

Two questions arose for consideration before the Supreme Court in appeal:

(*a*) In a case involving offence punishable under Section 304-B, is the period for filing challan 90 days or 60 days?

(*b*) Does mere filing of challan without relevant documents satisfy the requirement of filing the challan within a stipulated period for the purpose of Section 167(2)(*a*)?

There is no dispute that all the relevant documents were before the court before expiry of 90 days. In case it is held that the period is 90 days and not 60 days in relation to an offence punishable under Section 304-B IPC, the second question would become academic so far as the facts of the present case are concerned.

Allowing the appeal,

Held :

The question is whether Section 304-B is an offence "punishable" with imprisonment for life. Under Section 304-B IPC the minimum sentence is 7 years but in a given case sentence of imprisonment for life can be awarded. Put differently, sentence of imprisonment for life can be awarded in respect of an offence punishable under Section 304-B IPC. The range varies between 7 years and imprisonment for life. Where minimum and maximum sentences are prescribed, both are imposable depending on the facts of the cases. What should be the adequate punishment in a given case has to be decided by the court on the basis of the facts and circumstances involved in the particular case. The stage of imposing a sentence comes only after recording the order of conviction of the accused person. The significant word in the proviso is "punishable". The word "punishable" as used in statutes which declare that certain offences are punishable in a certain way means liable to be punished in the way designated. It is ordinarily defined as deserving of or capable or liable to punishment, capable of being punished by law or right, may be punished or liable to be punished, and not must be punished. It cannot, therefore, be accepted that only the minimum sentence is imposable and not the maximum sentence. Merely because minimum sentence is provided that does not mean that the sentence imposable is only the minimum sentence. The High Court's view in the impugned order that permissible period of filing of challan is 90 days is the correct view. (Paras 11 and 15). *Bhupinder Singh* v. *Jarnail Singh*, (2006) 6 SCC 277: (2006) 3 SCC (Cri) 101: AIR 2006 SC 2622: (2006) 4 KLT 460.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 13-7-2006]

Rajeev Chaudhary v. State (NCT) of Delhi, (2001) 5 SCC 34: 2001 SCC (Cri) 819; Sunil Kumar v. State of Jharkhand, (2003) 2 Rec Cri R 135: 2002 Cri LJ 2507 (Jhar), overruled

Keshav Dev v. State of Rajasthan, 2005 Cri LJ 3306 (Raj); State of H.P. v. Lal Singh, 2003 Cri LJ 1668 (HP); Kuldeep Singh v. State of Punjab, (2005) 3 RCR 599 (P&H), approved

— S. 169 *See* Ss. 170, 169 and 173(2)
See also Ss. 173(2), 169 and 190(1)
See also Ss. 190, 173(2), 169, 200, 202 and 204
See also Ss. 190(1), 173(2), 169, 200 and 202
See also Ss. 482, 190(1)(b), 204, 173, 169 and 362

[184] — Ss. 170, 169 and 173(2) — Expressions "charge-sheet" and "final report" — Meaning — *Words and phrases — "charge-sheet", "final report"*

The expressions "charge-sheet" or "final report" are not used in CrPC, but it is understood in Police Manuals of several States containing the rules and the regulations to be a report by the police filed under Section 170 CrPC, described as a "charge-sheet". In case of reports sent under Section 169 i.e. where there is no sufficiency of evidence to justify forwarding of a case to a Magistrate, it is termed variously i.e. referred charge, final report or summary. (Para 13). *Minu Kumari* v. *State of Bihar*, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310: AIR 2006 SC 1937: 2006 Cri LJ 2468: (2006) 2 KLT 588: (2006) 3 Guj LR 2013.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-4-2006]

Gangadhar Janardan Mhatre v. State of Maharashtra, (2004) 7 SCC 768: 2005 SCC (Cri) 404, relied on

[185] — Ss. 170, 173, 36 and 24 — Question whether accused/cases to be sent to Magistrate for trial — Determination of — *Person solely authorised to have discretion in the matter, held (per curiam), is the officer in charge of a police station — Opinion as to whether or not there is a case to place the accused on trial, has to be of the said officer and this function cannot be delegated and cannot be performed by any other authority — S. 36 only entitles*

superior officers to supervise or participate — Even a competent Magistrate cannot compel the officer concerned to form a particular opinion — Lastly, there is no stage during which the investigating officer is legally obliged to take Public Prosecutor's or any other authority's opinion other than that of a superior officer under S. 36 — Public Prosecutor is not involved in investigation — It is not the scheme of CrPC for supporting any combined operation between the IO and Public Prosecutor for filing the report in court

Under CrPC, investigation consists of proceeding to the spot, ascertainment of the facts and circumstances of the case, discovery and arrest of the suspected offender, collection of evidence and formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial, and if so, taking the necessary steps for the same by the filing of a charge-sheet under Section 173. The scheme of CrPC shows that while it is permissible for an officer in charge of a police station to depute some subordinate officer to conduct some of these steps in the investigation, the responsibility for each one of the above steps is that of the officer in charge of the police station. The final step in the investigation, namely, the formation of the opinion as to whether or not there is a case to place the accused on trial is to be of the officer in charge of the police station and this function cannot be delegated and can be performed by no other authority. The formation of the opinion of the police on the material collected during the investigation as to whether judicial scrutiny is warranted or not is entirely left to the officer in charge of the police station. There is no provision for delegation of the above function regarding formation of the opinion but only a provision entitling the superior officers to supervise or participate under Section 36 CrPC. (Paras 20, 21 and 31)

The importance of the opinion formed by the officer in charge of the police station is seen from the fact that the opinion of the officer in charge of the police station is the basis of the report based on which the competent Magistrate must determine whether to take cognizance or not. Even a competent Magistrate cannot compel the police officer concerned to form a particular opinion. Although the Magistrate may have certain supervisory powers under CrPC, it cannot be said that when the police submits a report that no case has been made out for sending the accused for trial, it is open to the Magistrate to direct the police to file a charge-sheet. (Para 21)

The term "investigation" under Section 173(2) of the Criminal Procedure Code includes the opinion of the officer in charge of the police station as to whether there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the case to the court concerned or not. This opinion is not legal evidence. At the stage of Section 173(2) the question of interpretation of legal evidence does not arise. In any event, that function is that of the courts. (Para 16). *M.C. Mehta (Taj Corridor Scam)* v. *Union of India*, (2007) 1 SCC 110: (2007) 1 SCC (Cri) 264.

Bench Strength **3**. Coram: **S.B. Sinha**[2], **S.H. Kapadia**[1] and *D.K. Jain*[1], JJ. [Date of decision: 27-11-2006]

H.N. Rishbud v. State of Delhi, AIR 1955 SC 196: (1955) 1 SCR 1150: 1955 Cri LJ 526; Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117: (1967) 3 SCR 668: 1968 Cri LJ 97; K. Veeraswami v. Union of India, (1991) 3 SCC 655: 1991 SCC (Cri) 734; Satya Narain Musadi v. State of Bihar, (1980) 3 SCC 152: 1980 SCC (Cri) 660; Kaptan Singh v. State of M.P., (1997) 6 SCC 185: 1997 SCC (Cri) 870; Vijender v. State of Delhi, (1997) 6 SCC 171: 1997 SCC (Cri) 857, followed

[186] — Ss. 170 and 173 — Opinion of officer in charge of the police station as to whether accused/case to be sent to Magistrate for trial — Nature of — Word "investigation" in S. 173 — Scope — *Held (per curiam), said word includes the abovesaid opinion, and the said opinion is not legal evidence — Further, at the stage of S. 173(2), question of interpretation of legal evidence does not arise*

The importance of the opinion formed by the officer in charge of the police station is seen from the fact that the opinion of the officer in charge of the police station is the basis of the report based on which the competent Magistrate must determine whether to take cognizance or not. Even a competent Magistrate cannot compel the police officer concerned to form a particular opinion. Although the Magistrate may have certain supervisory powers under CrPC, it cannot be said that when the police submits a report that no case has been made out for sending the accused for trial, it is open to the Magistrate to direct the police to file a charge-sheet. (Para 21)

The term "investigation" under Section 173(2) of the Criminal Procedure Code includes the opinion of the officer in charge of the police station as to whether there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the case to the court concerned or not. This opinion is not legal evidence. At the stage of Section 173(2) the question of interpretation of legal evidence does not arise. In any event, that function is that of the courts. (Para 16)

Once the jurisdiction is conferred on CBI to investigate an offence by virtue of a notification under Section 3 the Delhi Special Police Establishment Act, 1946 the powers of investigation are governed by the statutory provisions under the general law applicable to such investigation and they cannot be curtailed by any executive instruction issued under Section 4(1) of the 1946 Act. (Paras 25 and 24)

In Supreme Court monitored CBI cases, the Supreme Court is concerned with ensuring proper and honest performance of its duty by CBI and that the Supreme Court is not concerned with the merits of the accusations in the investigation, which are to be determined at the trial on the filing of the charge-sheet in the competent court, according to the ordinary procedure prescribed by law. (Para 30)

Under the CBI Manual, the officer in charge of the police station is the SP. In this connection clauses 6.1 and 19.15 of the CBI (Crime) Manual, 2005 which though the Manual not being binding on the Supreme Court in Supreme Court monitored CBI cases, nonetheless throws light on the controversy in hand. (Para 31)

As held in *Sushil Kumar Modi case*, (1996) 6 SCC 500, in case of any difference of opinion between officers of CBI in respect of the investigation, the final decision would not be taken by the Director himself or by the Director merely on the opinion of the Legal Department of CBI, but the matter would be decided according to the opinion of the Attorney General for India for the purpose of investigation and filing of the charge-sheet against any individual. In that event, the opinion would be sought from the Attorney General after making available to him the opinions expressed on the subject by the persons associated with the investigation as a part of the materials. (Para 22)

The entire investigating team as well as the law officers of CBI were *ad idem* in their mind. They had recommended prosecution. It was only the Director of Prosecution and the Senior Public Prosecutor who had opined that a closure report should be filed. It may be noted that the Senior Public Prosecutor does not find place in clause 6.1 of the CBI Manual which refers to the administrative hierarchy of CBI. Further, the Director of Prosecution is the only CBI officer who had dissented from the opinion of the investigating team including the SP. It appears that this opinion is also based only on interpretation of legal evidence. Moreover, as can be seen from the status report dated 31-12-2004, the Director, CBI has not given his independent opinion. He has merely relied upon the opinion of the Attorney General. The Director, CBI expressing an opinion and then referring the matter to the Attorney General can be understood. However, under the above circumstances there was no difference of opinion in the matter of investigation between the officers concerned of CBI and, therefore, there was no question of the Director, CBI referring the matter to the Attorney General for India. (Para 32)

It cannot be understood why an opinion of Senior Public Prosecutor had been taken in the present case. He is not a member of the hierarchy. The SP is not legally obliged to take his opinion. In the circumstances, when there was no difference of opinion in the team concerned, the question of seeking opinion of the Attorney General did not arise. Lastly, even under clause 19.15 of the CBI Manual it is expressly stated that the report of the SP should be prepared personally by the SP and that the internal differences of opinion among CBI officers should not find place in the SP's report. (Para 32)

Keeping in mind the scheme of Sections 168 to 170 and 173 CrPC, in the facts and circumstances of this case the entire material collected by CBI along with the report of the SP is directed to be placed before the court/Special Judge concerned in terms of Section 173(2) CrPC. The decision to accept or reject the report of the SP shall be that of the court/Special Judge concerned, who will decide the matter in accordance with law. It is made clear that none of the other opinions/recommendations including that of the Attorney General for India or the CVC shall be forwarded to the court/Special Judge concerned. (Paras 32 and 34)

In an earlier order the Supreme Court had given time to CBI to complete legal scrutiny when the Supreme Court had been told that there was a difference of opinion in the administrative hierarchy of CBI. However, after going through the recommendations of the above officers, as it has been found that there was no difference of opinion of the officers concerned there was no question of reference to the Attorney General. The status report dated 31-12-2004 is rejected as it is a charade of the performance of duty by CBI. Thus, a case for judicial review is made out. (Para 33)

In matters after matters, it is found that the efficacy and ethics of the governmental authorities are progressively coming under challenge before the Supreme Court by way of PIL for failure to perform their statutory duties. If this continues, a day might come when the rule of law will stand reduced to "a rope of sand". (Para 35)

Per Sinha, J. (concurring)

The Delhi Special Police Establishment Act, 1946 indisputably applies in regard to charges of corruption made against public servants. The CBI Manual is subject to the provisions of Criminal Procedure Code. In case of conflict, although none has been pointed out in the present case, evidently, CrPC shall prevail. (Paras 38 and 43)

Subject to the above, the opinion expressed by the learned Brother Kapadia, J. is concurred with. (Para 49). *M.C. Mehta (Taj Corridor Scam)* v. *Union of India*, (2007) 1 SCC 110: (2007) 1 SCC (Cri) 264.

Bench Strength 3. Coram: **S.B. Sinha**[2], **S.H. Kapadia**[1] and *D.K. Jain*[1], JJ. [Date of decision: 27-11-2006]

H.N. Rishbud v. State of Delhi, AIR 1955 SC 196: (1955) 1 SCR 1150: 1955 Cri LJ 526; Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117: (1967) 3 SCR 668: 1968 Cri LJ 97; R. Sarala v. T.S. Velu, (2000) 4 SCC 459: 2000 SCC (Cri) 823; K. Veeraswami v. Union of India, (1991) 3 SCC 655: 1991 SCC (Cri) 734; Satya Narain Musadi v. State of Bihar, (1980) 3 SCC 152: 1980 SCC (Cri) 660; Kaptan Singh v. State of M.P., (1997) 6 SCC 185: 1997 SCC (Cri) 870; Vijender v. State of Delhi, (1997) 6 SCC 171: 1997 SCC (Cri) 857; Vineet Narain v. Union of India, (1998) 1 SCC 226: 1998 SCC (Cri) 307; Union of India v. Prakash P. Hinduja, (2003) 6 SCC 195: 2003 SCC (Cri) 1314; Union of India v. Sushil Kumar Modi, (1996) 6 SCC 500; Union of India v. Sushil Kumar Modi, (1997) 4 SCC 770, followed

— **S. 172** *See* EVIDENCE ACT, 1872, S. 114 Ill. (g), (2006) 10 SCC 157

— **S. 173** *See also* Ss. 170 and 173

See also Ss. 170, 173, 36 and 24

See also Ss. 215, 173, 220 and 228

See also Ss. 437, 439 and 173

See also Ss. 482, 156 and 173

See also Ss. 482, 190(1)(b), 204, 173, 169 and 362

— **S. 173 — Monitoring of case by Supreme Court — Scope** *See* CONSTITUTION OF INDIA — 'Article 32' — Public Interest Litigation/PIL, Art. 32, (2006) 6 SCC 613

— **S. 173(2)** *See also* Ss. 170, 169 and 173(2)

See also Ss. 190, 173(2), 169, 200, 202 and 204

See also Ss. 190(1), 173(2), 169, 200 and 202

[187] — Ss. 173(2), 169 and 190(1) — Consideration of police report — Notice and hearing to informant — *When on submission of police report under S. 173(2) Magistrate decides not to take cognizance and to drop proceeding against all or some of the accused, held, informant is entitled to a notice and an opportunity to be heard at the time of consideration of the report — The said right is conferred on the informant and none else — If the informant not aware as to when the matter is to be considered, he cannot be faulted even if protest petition is filed belatedly*

When the information is laid with the police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Criminal Procedure Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. A writ petition in such cases is not to be entertained. (Para 16). *Minu Kumari* v. *State of Bihar*, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310: AIR 2006 SC 1937: 2006 Cri LJ 2468: (2006) 2 KLT 588: (2006) 3 Guj LR 2013.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-4-2006]

Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537: 1985 SCC (Cri) 267, followed

[188] — Ss. 173(2) and 167(2) proviso (a)(i) — Challan — When defective — *Challan filed without relevant documents viz. negatives of certain photographs — But all the relevant documents were placed before the court before expiry of 90 days' period stipulated under proviso (a)(i) to S. 167(2) which was applicable in the instant case — Hence prayer for grant of bail rightly refused — However, it would be appropriate to file the original photographs along with the report under Section 173(2) CrPC, which can be taken back with permission of the court to be produced as and when required — Alternatively, the xerox copies can be filed along with a certificate that they can be compared with the originals, as and when so directed by the court* (Paras 19 and 20). *Bhupinder Singh* v. *Jarnail Singh*, (2006) 6 SCC 277: (2006) 3 SCC (Cri) 101: AIR 2006 SC 2622: (2006) 4 KLT 460.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 13-7-2006]

[189] — S. 173(8) — Further investigation — *When power under sub-section (8) is exercised Court should not ordinarily interfere therewith by directing that investigation be made from a particular angle or by a particular agency* (Para 48). *Popular Muthiah* v. *State*, (2006) 7 SCC 296: (2006) 3 SCC (Cri) 245.

Bench Strength 2. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 4-7-2006]

[190] — S. 174 — Investigation under — Scope of — Necessary contents of inquest report — *Held, said investigation is limited in scope and is confined to ascertainment of apparent cause of death — It is concerned with discovering whether in a given case the death was accidental, suicidal or homicidal or caused by animal, and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted — Details of overt acts need not be recorded in inquest report — Question regarding details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted or who were the witnesses of the assault is foreign to the ambit and scope of proceedings under S. 174 — No requirement in law to mention details of FIR, names of accused or the names of eyewitnesses or the gist of their statements in inquest report, nor is*

the said report required to be signed by any eyewitness — Criminal Trial — Inquest report — Necessary contents of — Scope of investigation under S. 174 CrPC (Paras 14 and 15). *Radha Mohan Singh* v. *State of U.P.*, (2006) 2 SCC 450: (2006) 1 SCC (Cri) 661: AIR 2006 SC 951: (2006) 2 All LJ 242: 2006 Cri LJ 1121.

Bench Strength **3**. Coram: *K.G. Balakrishnan, Arun Kumar* and **G.P. Mathur**, JJ. [Date of decision: 20-1-2006]

Pedda Narayana v. State of A.P., (1975) 4 SCC 153: 1975 SCC (Cri) 427; Shakila Khader v. Nausheer Cama, (1975) 4 SCC 122: 1975 SCC (Cri) 379; Eqbal Baig v. State of A.P., (1986) 2 SCC 476: 1986 SCC (Cri) 232; Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641; Khujji v. State of M.P., (1991) 3 SCC 627: 1991 SCC (Cri) 916, followed

Meharaj Singh v. State of U.P., (1994) 5 SCC 188: 1994 SCC (Cri) 1391, overruled on this point

— S. 174 — Discrepancy, overwriting, omission or contradiction in inquest report — Contention as to — When could be entertained *See* CRIMINAL TRIAL — 'Inquest report', (2006) 2 SCC 450

— S. 177 *See* Ss. 178(c) and 177 and 406

— Ss. 177 to 184 and 186 to 188 — Expression "cause of action" — Meaning — Question whether the cause of action in the subsequent case is identical with that in the first case — Mode of determination *See* WORDS AND PHRASES, (2006) 6 SCC 207

[191] — Ss. 178(c) & 177 and 406 — Place of inquiry and trial — Continuing offence — Territorial jurisdiction of court — *Appellant 1 married with Respondent 2 and living in matrimonial home at Jabalpur (MP) — Appellant 1's father-in-law lodged a complaint with police at Jabalpur alleging ill-treatment to Respondent 2 and demand of dowry from her by Appellant 1 and his family members (appellants) — Respondent 2 also lodged FIR alleging that her husband and in-laws ill treated her so much that she had to leave the matrimonial home and to live with her parents at Datia (MP) — Whether the offence was a continuing one such that CJM at Datia had jurisdiction to take cognizance of the offence — Held, offence cannot be said to be continuing one only because complainant Respondent 2 was forced to leave her matrimonial home and stayed with her parents at Datia — High Court erred in taking the view that Respondent 2 having been forced to leave her matrimonial home on account of torture by her in-laws, it amounted to mental cruelty and harassment which continued even at the place of her father at Datia and therefore, the offence may be inquired into and tried also at Datia court — In view of S. 177, which ordains that offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed, the offence in question must be inquired into and tried by court at Jabalpur and not by court at Datia where no part of cause of action arose — Therefore, interest of justice would be subserved, while setting aside the order of the High Court, if in exercise of Supreme Court's jurisdiction under Art. 142 of the Constitution transfer of the criminal case pending in the Court of Chief Judicial Magistrate, Datia to the Court of Chief Judicial Magistrate, Jabalpur is directed — Constitution of India, Art. 142. Manish Ratan* v. *State of M.P.*, (2007) 1 SCC 262: (2007) 1 SCC (Cri) 336.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 1-11-2006]

Sujata Mukherjee v. Prashant Kumar Mukherjee, (1997) 5 SCC 30: 1997 SCC (Cri) 673, distinguished

— S. 184 *See* Ss. 177 to 184 and 186 to 188

— S. 186 *See* Ss. 177 to 184 and 186 to 188

— S. 187 *See* Ss. 177 to 184 and 186 to 188

— S. 188 *See* Ss. 177 to 184 and 186 to 188

— S. 190 *See also* Ss. 154, 156, 190, 200 and 203

See also Ss. 154, 156, 190 and 200 to 203

See also Ss. 155 to 157 and 190

See also Ss. 482, 190 and 204

[192] — S. 190 — Court's jurisdiction to take cognizance — Foundation of — *Though police report is material on which cognizance is taken, held (per curiam), from that it cannot be said that a valid and legal police report is the foundation of the court's jurisdiction to take cognizance*

Though a police report which results from an investigation as provided for in Section 190 CrPC is the material on which cognizance is taken, from that it cannot be said that a valid and legal police report is the foundation of the jurisdiction of the court to take cognizance. (Para 20). *M.C. Mehta (Taj Corridor Scam)* v. *Union of India*, (2007) 1 SCC 110: (2007) 1 SCC (Cri) 264.

Bench Strength **3**. Coram: **S.B. Sinha**[2], **S.H. Kapadia**[1] and *D.K. Jain*[1], JJ. [Date of decision: 27-11-2006]

— S. 190 — High Courts must also keep in mind the doctrine of forum non conveniens *See* CONSTITUTION OF INDIA — 'Article 226' — Articles 226 and 227, Arts. 226 and 227, (2006) 3 SCC 658

[193] — Ss. 190, 173(2), 169, 200, 202 and 204 — Jurisdiction of Magistrate in respect of issuance of process or taking cognizance of offence — Conditions precedent to exercise of

The jurisdiction of the learned Magistrate in the matter of issuance of process or taking of cognizance depends upon existence of conditions precedent therefor. The Magistrate has jurisdiction in the event a final form is filed (*i*) to accept the final form; (*ii*) in the event a protest petition is filed to treat the same as a complaint petition and if a prima facie case is made out, to issue processes; (*iii*) to take cognizance of the offences against a person, although a final form has been filed by the police, in the event he comes to the opinion that sufficient materials exist in the case diary itself therefor; and (*iv*) to direct reinvestigation into

the matter. (Para 54). *Popular Muthiah* v. *State*, (2006) 7 SCC 296: (2006) 3 SCC (Cri) 245.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 4-7-2006]

[194] — Ss. 190 and 193 — New Code provides for cognizance of an offence and committal of a case, as contradistinguished from cognizance of an offender or committal of an accused to Court of Session as was in the old Code — *Criminal Procedure Code, 1898, Ss. 190, 193 and 206* (Para 23). *Popular Muthiah* v. *State*, (2006) 7 SCC 296: (2006) 3 SCC (Cri) 245.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 4-7-2006]

[195] — Ss. 190, 193 and 195 to 199 & 204 — Word "cognizance" — Meaning of — Explained — *Distinguished from "issuance of process" — Order remanding accused to judicial custody does not amount to taking cognizance of the offence — Words and phrases — "cognizance", "issuance of process"* .

Several provisions in Chapter XIV of the Criminal Procedure Code use the word "cognizance". However, the word "cognizance" has not been defined in the Criminal Procedure Code. The dictionary meaning of the word "cognizance" is — "judicial hearing of a matter". Taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out. (Paras 10 and 13). *State of Karnataka* v. *Pastor P. Raju*, (2006) 6 SCC 728: (2006) 3 SCC (Cri) 179: AIR 2006 SC 2825: (2006) 102 Cut LT 612: (2006) 3 KLT 830.

Bench Strength **2**. Coram: **G.P. Mathur** and *Dalveer Bhandari*, JJ. [Date of decision: 4-8-2006]

[196] — Ss. 190, 200 and 157 — Refusal of police to register FIR — Refusal by High Court to direct police to file FIR — Filing of criminal complaint before competent court as permitted by High Court — Effect of — *Held, if a criminal complaint is filed, the same shall be considered on its own merit without being prejudiced by any observation made either in impugned order of High Court refusing to direct police to register FIR or in report submitted by the District Judge. Ravinder Kaur* v. *State of Punjab*, (2006) 9 SCC 188: (2006) 2 SCC (Cri) 617.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 30-11-2005]

— S. 190(1) *See also* Ss. 173(2), 169 and 190(1)

[197] — Ss. 190(1), 173(2), 169, 200 and 202 — Magistrate's power to take cognizance of offence — Conclusion drawn by IO — Effect — *Report forwarded by police to Magistrate that no case made out against accused — Held, the Magistrate can ignore the conclusion arrived at by IO — He can independently apply his mind to the facts emerging from investigation and take cognizance, if he thinks fit, by exercising powers under S. 190(1)(b) CrPC — Not bound to follow the procedure under Ss. 200 and 202 for taking cognizance under S. 190(1)(a) CrPC though open to him to act under S. 200 or S. 202 also*

There is no obligation on the Magistrate to accept the police report if he does not agree with the opinion formed by the police. The power to take cognizance notwithstanding formation of the opinion by the police which is the final stage in the investigation has been provided for in Section 190(1)(*c*). (Para 10)

When a report forwarded by the police to the Magistrate under Section 173(2)(*i*) is placed before him several situations arise: the report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (*1*) accept the report and take cognizance of the offence and issue process, or (*2*) may disagree with the report and drop the proceeding, or (*3*) may direct further investigation under Section 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he again has option of adopting one of the three courses open i.e. (*1*) he may accept the report and drop the proceeding; or (*2*) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (*3*) he may direct further investigation to be made by the police under Section 156(3). The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(*b*) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(*b*) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independ-

ently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(*b*) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(*a*) though it is open to him to act under Section 200 or Section 202 also. (Para 11). *Minu Kumari* v. *State of Bihar*, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310: AIR 2006 SC 1937: 2006 Cri LJ 2468: (2006) 2 KLT 588: (2006) 3 Guj LR 2013.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-4-2006]

— **S. 190(1)(b)** *See* Ss. 482, 190(1)(b), 204, 173, 169 and 362

— **S. 193** *See* Ss. 190, 193 and 195 to 199 and 204

— **S. 195** *See* Ss. 190, 193 and 195 to 199 and 204

[198] — S. 196(1-A) — Bar under, against taking cognizance of offences enumerated therein except with prior sanction of Central Govt. or State Govt. or District Magistrate — Applicability — *Held, the said bar is against taking of cognizance by court and not against registration of criminal case or investigation by police or submission of police report under S. 173 CrPC on completion of investigation — If the said acts are done without prior sanction of Central Govt. or State Govt. or District Magistrate, there will be no violation of S. 196(1-A) — FIR lodged under S. 153-B IPC against respondent — Respondent produced before Magistrate — Magistrate remanding respondent to judicial custody — Held, order of remand did not amount to taking cognizance of the offence — High Court erred in taking a contrary view in this regard — Thus, in such circumstances, S. 196(1-A) had no application — Quashing of proceedings by High Court due to absence of prior sanction under S. 196(1-A), held, not justified — Penal Code, 1860, S. 153-B*

An FIR under Section 153-B IPC was lodged against the respondent. The respondent was arrested. He was produced before a Magistrate on the same day who remanded him to judicial custody as no application for bail had been filed. The respondent filed a petition under Section 482 CrPC before the High Court. The High Court quashed the entire proceedings initiated against the respondent on the ground that as the investigating agency had not obtained previous sanction of the Central Government or of the State Government or of the District Magistrate as required by Section 196(1-A) CrPC, the initiation of criminal proceedings against the respondent was bad in law. Hence, the present appeal by the State.

Allowing the appeal, the Supreme Court *Held* :

The opening words of Section 196(1-A) are "No court shall take cognizance" and consequently the bar created by the provision is against taking of cognizance by the court. There is no bar against registration of a criminal case or investigation by the police agency or submission of a report by the police on completion of investigation, as contemplated by Section 173 CrPC. If a criminal case is registered, investigation of the offence is done and the police submits a report as a result of such investigation before a Magistrate without the previous sanction of the Central Government or of the State Government or of the District Magistrate, there will be no violation of Section 196(1-A) CrPC and no illegality of any kind would be committed. (Para 8)

Several provisions in Chapter XIV of the Criminal Procedure Code use the word "cognizance". However, the word "cognizance" has not been defined in the Criminal Procedure Code. The dictionary meaning of the word "cognizance" is — "judicial hearing of a matter". Taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out. (Paras 10 and 13)

In the present case neither any complaint had been filed nor any police report had been submitted nor any information had been given by any person other than the police officer before the Magistrate competent to take cognizance of the offence. After the FIR was lodged and the respondent was arrested, he was produced before the Magistrate. The Magistrate had merely passed an order remanding him to judicial custody. An order remanding an accused to judicial custody does not amount to taking cognizance of an offence. In such circumstances Section 196(1-A) CrPC can have no application at all and the High Court clearly erred in quashing the proceedings on the ground that previous sanction of the Central Government or of the State Government or of the District Magistrate had not been obtained. On the view taken by the High Court, no person accused of an offence, which is of the nature which requires previous sanction of a specified authority before taking of cognizance by the court, can ever be arrested nor such an offence can be investigated by the police. Therefore, the whole premise on the basis of which the proceedings have been quashed by the High Court is

wholly erroneous in law and is liable to be set aside. (Para 14). *State of Karnataka* v. *Pastor P. Raju*, (2006) 6 SCC 728: (2006) 3 SCC (Cri) 179: AIR 2006 SC 2825: (2006) 102 Cut LT 612: (2006) 3 KLT 830.

Bench Strength **2**. Coram: **G.P. Mathur** and *Dalveer Bhandari*, JJ. [Date of decision: 4-8-2006]

— **S. 197** *See* PREVENTION OF CORRUPTION ACT, 1988, S. 19, (2006) 1 SCC 294, (2006) 7 SCC 172

[199] — S. 197 — Object of — Protection given to public servants thereunder — Scope of — Case-law considered — *Per C.K. Thakker, J., said protection is qualified and conditional — Protection not available if the act complained of has no nexus, reasonable connection or relevance to the official act or duty of the public servant and is otherwise illegal, unlawful or in the nature of an offence*

The primary object of the legislature behind Section 197 CrPC is to protect public officers who have acted in discharge of their duties or purported to act in discharge of such duties. But, it is equally well settled that the act said to have been committed by a public officer must have reasonable connection with the duty sought to be discharged by such public officer. If the act complained of has no nexus, reasonable connection or relevance to the official act or duty of such public servant and is otherwise illegal, unlawful or in the nature of an offence, he cannot get shelter of Section 197 CrPC. In other words, protection afforded by the said section is qualified and conditional. (Para 67). *Sankaran Moitra* v. *Sadhna Das*, (2006) 4 SCC 584: (2006) 2 SCC (Cri) 358: AIR 2006 SC 1599.

Bench Strength **3**. Coram: *Y.K. Sabharwal, C.J.*[1] and **C.K. Thakker**[2] and **P.K. Balasubramanyan**[1], JJ. [Date of decision: 24-3-2006]

[200] — S. 197 — Applicability — Expression "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" — Words "official duty", how to be construed — *Held, "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should fall within the scope and range of his official duty — Test is whether omission or neglect to do that act would have brought on the charge of dereliction of his official duty — S. 197 to be construed strictly while determining its applicability to any act or omission in the course of service — Hence protection does not extend to criminal activities — But, where act or omission performed by a public servant had reasonable connection with discharge of his duty, it must be held to be official — Words and phrases — "Official", "official duty"*

There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty: if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case. (Paras 6 and 13)

"Official", according to the dictionary, means pertaining to an office, and "official act" or "official duty" means an act or duty done by an officer in his official capacity. Use of the expression "official duty" therefore implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. (Paras 10 and 11)

The protective cover of Section 197 has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty; that is under the colour of office. Official duty, therefore, implies that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly, while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. For instance a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. (Para 12). *Rakesh Kumar Mishra* v. *State of Bihar*, (2006) 1 SCC 557: (2006) 1 SCC (Cri) 432: AIR 2006 SC 820: 2006 Cri LJ 808: (2006) 2 KLT 26.

Bench Strength **2**. Coram: **Arijit Pasayat** and *G.P. Mathur*, JJ. [Date of decision: 3-1-2006]

[201] — S. 197 — Applicability — Protection given to public servants under — Object of, restated — Invocation of the said protection — Prerequisite for — Stage at which attracted — Preliminary enquiry by court as to applicability of S. 197 — *Held, protection is available only when the alleged act done by the public servant is reasonably connected*

with the discharge of his official duty and is not merely a cloak for doing the objectionable act — Therefore the concept of S. 197 does not get immediately attracted on institution of the complaint case — Test to determine the reasonable connection between the act complained of and the official duty, restated — Even if the public servant acted in excess of his duty, if there exists the said reasonable connection, held, the excess will not deprive him of the protection

The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if it chooses to exercise it, complete control of the prosecution. (Para 6)

The said protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. (Para 6)

Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. (Para 6)

There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty: if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case. (Paras 6 and 13). *Rakesh Kumar Mishra* v. *State of Bihar*, (2006) 1 SCC 557: (2006) 1 SCC (Cri) 432: AIR 2006 SC 820: 2006 Cri LJ 808: (2006) 2 KLT 26.

Bench Strength **2**. Coram: **Arijit Pasayat** and *G.P. Mathur*, JJ. [Date of decision: 3-1-2006]

[202] — S. 197 — Employee of govt. company or public undertaking — Need for sanction — *Sanction for prosecution of State Govt. officer (appellant) on deputation as MD of a cooperative society (State Cooperative Land Development Bank) for offence under IPC (S. 500), held, not required to be obtained under S. 197 — No sanction required for prosecution of an officer of a govt. company or public undertaking — Appellant not covered by the definition of public servant under S. 21 IPC — Definition of "government employee" under R. 2(d) of Haryana Civil Services (Punishment and Appeal) Rules, being "for the purpose of these Rules", cannot be applied for affording protection under S. 197 — S. 118 of Haryana Cooperative Societies Act regarding taking cognizance of offence is also confined to offence under the said Act and not under IPC, hence not applicable in this case — S. 123 of the said Act also not applicable to the MD of the cooperative bank as he was not engaged in recovery of loan, nor appointed as a liquidator and nor an arbitrator so as to fall within that provision — Haryana Civil Services (Punishment and Appeal) Rules, 1987, R. 2(d) — Haryana Cooperative Societies Act, 1984 (22 of 1984), Ss. 118 and 123 — Penal Code, 1860, S. 21 cl. 12*

The underlying object in enacting Section 197 CrPC is to protect a public servant from frivolous prosecution. The said provision, however, although may not be construed too narrowly, cannot be interpreted liberally so as to bring within its purview other officers who are not so protected. Section 197, inter alia, protects the public servants. "Public servant" has been defined in Section 21 IPC but the appellant herein does not answer the description of a public servant within the meaning of Section 21 IPC. The salary of the appellant is not paid by the Government. He at the relevant time was not in the service of the State. Prosecution against an officer of a government company or a public undertaking would not require any

sanction under Section 197 CrPC. There is a well-marked distinction between a body created by a statute and a body coming into existence and governed in accordance with the provisions of a statute. (Paras 12, 14, 13 and 17)

The appellant also cannot be said to have continued to be a public servant within the meaning of the Haryana Civil Services (Punishment and Appeal) Rules, 1987. The definition of "government employee" in Rule 2(*d*) of the said Rules cannot be extended for purposes other than sought to be achieved thereby. Provisions of the said Rules, therefore, cannot be invoked for affording protection under Section 197 CrPC. (Para 14)

Section 117 of the Haryana Cooperative Societies Act, 1984 enumerates offences. Section 118 limits taking of cognizance of offences which come within the purview of the said Act, as would be evident from sub-section (1) thereof, and not under the provisions of IPC or any other statute. The said provision, therefore, has no application. In terms of Section 123, only an employee who is engaged in the recovery of loans or a person who has been appointed as a liquidator or an arbitrator only shall be treated as a public servant. By reason of the said provision, a legal fiction has been created. A legal fiction, as is well known, is created for a specific purpose and thus, applicability thereof cannot be extended for a purpose other than that for which it has been created. As the Managing Director of Haryana State Cooperative Land Development Bank Ltd., the appellant was not engaged in the recovery of loans or appointed as a liquidator or an arbitrator and in that view of the matter, the limited purpose for which the legal fiction has been created would have no application in the instant case. (Paras 15 and 16). *N.K. Sharma* v. *Abhimanyu*, (2005) 13 SCC 213: (2006) 2 SCC (Cri) 135: AIR 2005 SC 4303: 2005 Cri LJ 4529: (2005) 4 KLT 738.

Bench Strength **2**. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 7-10-2005]

[203] — S. 197 — Grant of sanction under S. 197 CrPC and S. 19, Prevention of Corruption Act, 1988 — Distinction between the two — *Held, the former is to be granted by the State whereas the latter can be granted also by the authorities specified in S. 19 — Prevention of Corruption Act, 1947, S. 6 — Prevention of Corruption Act, 1988, S. 19* (Para 11). *Romesh Lal Jain* v. *Naginder Singh Rana*, (2006) 1 SCC 294: (2006) 2 SCC (Cri) 593: AIR 2006 SC 336: 2005 Cri LJ 5068.

Bench Strength **2**. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 28-10-2005]

[204] — S. 197 — Offence by public servant in discharge of his official duty — Bar under S. 197 regarding court's power to take cognizance — Nature and applicability of — *Held, is absolute and complete — Hence, court cannot take cognizance of complaint against public servant in respect of an offence alleged to have been committed in discharge of official duty unless sanction is obtained from the appropriate authority — However, given that it must be determined whether there is a reasonable connection between the act done and the official duty, the concept of S. 197 does not get immediately attracted on institution of the complaint case — Word "cognizance" — Meaning of, explained*

Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. (Para 6)

There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty: if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case. (Paras 6 and 13)

The mandatory character of the protection afforded to a public servant is brought out by the expression "no court shall take cognizance of such offence except with the previous sanction". Use of the words "no" and "shall" make it abundantly clear that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. (Para 9)

The protective cover of Section 197 has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty; that is under the colour of office. Official duty, therefore, implies that the act or omis-

sion must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly, while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. For instance a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. (Para 12). *Rakesh Kumar Mishra* v. *State of Bihar*, (2006) 1 SCC 557: (2006) 1 SCC (Cri) 432: AIR 2006 SC 820: 2006 Cri LJ 808: (2006) 2 KLT 26.

Bench Strength **2**. Coram: **Arijit Pasayat** and *G.P. Mathur*, JJ. [Date of decision: 3-1-2006]

— S. 197 — Position obtaining under, in respect of those public servants not holding the same post/office — Contrasted with position under S. 19 — PC Act, 1988 *See* PREVENTION OF CORRUPTION ACT, 1988, S. 19, (2007) 1 SCC 1

[205] — S. 197 — Prosecution of a retired public servant — Necessity of obtaining sanction for — Held, is essential in cases where S. 197 has application — But an accused facing prosecution for offences under the Prevention of Corruption Act, 1947 or Prevention of Corruption Act, 1988 cannot claim any immunity on the ground of want of sanction if he ceased to be a public servant on the date when the court took cognizance of the said offences *— Prevention of Corruption Act, 1947, S. 6 — Inapplicability to retired public servant — Position contrasted with that obtaining under S. 197, CrPC — Prevention of Corruption Act, 1988, S. 19 — Inapplicability to retired public servant — Position contrasted with that obtaining under S. 197, CrPC*

The correct legal position, therefore, is that an accused facing prosecution for offences under the Prevention of Corruption Act, 1947 or Prevention of Corruption Act, 1988 cannot claim any immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the court took cognizance of the said offences. But the position is different in cases where Section 197 of the Code has application the expression "was" came to be employed after the expression "is" in Section 197 so as to make the (*sic* need for) sanction applicable even in cases where a retired public servant is sought to be prosecuted. (Paras 17 and 19). *Rakesh Kumar Mishra* v. *State of Bihar*, (2006) 1 SCC 557: (2006) 1 SCC (Cri) 432: AIR 2006 SC 820: 2006 Cri LJ 808: (2006) 2 KLT 26.

Bench Strength **2**. Coram: **Arijit Pasayat** and *G.P. Mathur*, JJ. [Date of decision: 3-1-2006]

Kalicharan Mahapatra v. State of Orissa, (1998) 6 SCC 411: 1998 SCC (Cri) 1455, followed

[206] — S. 197 — Question relating to sanction under — Stage(s) at which to be considered *— Held, said question is not necessarily to be considered as soon as the complaint is lodged — This question may arise at any stage of the proceeding, and question whether sanction is necessary or not may have to be determined from stage to stage*

The question relating to the need of sanction under Section 197 CrPC is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage. (Para 38). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

[207] — S. 197 — Requirement of obtaining sanction for prosecution — Notification in question making S. 197 applicable to serving police officials charged with the maintenance of public order — Applicability of — Expression "public order" — Meaning and scope *— Respondent police officer committing offences in question while investigating case under Essential Commodities Act (EC Act) — Held, the said investigation may not be equated with the maintenance of public order as is commonly understood — Activities of a single individual giving rise to irregularities of maintenance of books of accounts as regards an essential commodity or resorting to black marketing, unless a volatile situation arises therefrom, cannot lead to disturbance of public peace, safety and tranquillity, which are essential requisites of "public order" — Therefore, the notification in question had no application in the facts and circumstances of the case — Thus, no sanction was required in terms of S. 197 — Prevention of Corruption Act, 1988, Ss. 19 and 13(2) — Prevention of Corruption Act, 1947, S. 6 — Words and phrases — "Public order"* (Paras 14 and 15). *Romesh Lal Jain* v. *Naginder Singh Rana*, (2006) 1 SCC 294: (2006) 2 SCC (Cri) 593: AIR 2006 SC 336: 2005 Cri LJ 5068.

Bench Strength **2**. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 28-10-2005]

[208] — S. 197 — Requirement under, of obtaining sanction to prosecute a public servant — Necessity of — Stage for raising question as to applicability of S. 197 *— Held (per majority), prosecution hit by provision under S. 197 cannot be launched without the contemplated sanction — It is a condition precedent though the question as to applicability of S. 197 may arise not necessarily at the inception but even at a subsequent stage — Request to postpone the decision*

on the said question in the instant case, held, not acceptable — Complaint that deceased, a supporter of a political party, was beaten to death by police personnel at the instance of appellant police officer near a polling booth on election day — Appellant was on duty to prevent any breach of law and maintain order on that day — He had reached the spot on receiving information regarding some disturbances at the polling booth — Held, appellant committed the act in question during the course of performance of his duty — Sanction under S. 197(1) was necessary for his prosecution — High Court's judgment taking contrary view set aside — High Court's reasoning that killing of a person by use of excessive force could never be performance of duty, not proper — Its further reasoning that if High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, is also not acceptable — Per C.K. Thakker, J. (dissenting), on applicability of S. 197 it is the duty of the Court to apply its mind to the fact situation before it — In the present case the appellant acted illegally, unlawfully and high-handedly and his act could not be said to be an act in discharge of official duty — Therefore, S. 197 not attracted

A criminal complaint was filed against the appellant police officer. The appellant challenged the said complaint on the ground that it was liable to be quashed for want of sanction under Section 197(1) CrPC. In the complaint it was alleged that the husband of the complainant was beaten to death on 10-5-2001 by the police personnel at the instance of the appellant. On the said date there was general election of the State Assembly. The complainant's husband was supporting a particular political party. It was the case of the complainant that her husband was supplying food packets at the polling booth. At that time, some police officers came there and they beat her husband. When her husband left the place, policemen chased him towards the lakeside. Her husband stated to the police personnel that he did not know swimming and requested them not to beat him. But the police officers did not pay any heed to the request and continued beating. The husband of the complainant fell down and became unconscious. He was taken to the hospital but was declared dead there. The complainant informed the Deputy Commissioner of Police on 11-5-2001 that her husband was beaten to death by the police and demanded "stern punishment" to persons responsible for killing him. On the next day i.e. on 12-5-2001, the Deputy Commissioner of Police registered a case for an offence punishable under Section 304 IPC. For a long period no action was taken on the basis of the complaint made by the complainant. The complainant therefore filed a private complaint on 28-5-2001 in the Court of CJM against the appellant and two other police officers for offences punishable under Sections 302, 201, 109 and 120-B IPC. The Magistrate took cognizance of the offences. On 16-6-2001 the Magistrate issued non-bailable warrants against the accused persons including the appellant. Meanwhile, on 30-6-2001, the accused preferred an application under Section 210 CrPC before the Magistrate stating therein that a complaint was filed by the complainant on 12-5-2001 which had been registered as PS Case No. 112 of 2001 for an offence punishable under Section 304 IPC by the police station concerned and proceedings were initiated. It was also stated that thereafter fax message was sent to the Joint Commissioner of Police to investigate the case under Section 302 which was treated as FIR. It was, therefore, prayed that the complaint dated 28-5-2001 may be stayed in view of the provisions under Section 210 CrPC.

Thereafter, the accused filed a petition under Section 482 CrPC before the High Court for quashing of proceedings. It was contended that the alleged offence had been committed by the accused "while acting or purporting to act" in the discharge of their official duties and no cognizance could be taken by the Court except with the previous sanction of the State Government. It was argued that since no such sanction was obtained before filing the complaint, the complaint was not maintainable at law and was liable to be dismissed only on that ground. The High Court, by the impugned order, dismissed the petition observing that it was a case of "merciless beating" by a police officer causing death of a person which could not be said to be an act in the discharge of official duty. Thus, the High Court observed that the instant case could not be said to be a case covered by Section 197 CrPC.

Allowing the appeal by a majority of 2:1,

Held :

Per P.K. Balasubramanyan, J. (for Y.K. Sabharwal, C.J., and himself)

The complainant argued that want of sanction under Section 197(1) CrPC did not affect the jurisdiction of the Court to proceed, but it was only one of the defences available to the accused and the accused can raise the defence at the appropriate time. This submission cannot be accepted. Section 197(1), its opening words and the object sought to be achieved by it, and the decisions of the Supreme Court, clearly indicate that a prosecution hit by that provision cannot be launched without the contemplated sanction. It is a condition precedent, as it were, for a successful prosecution of a public servant when the provision is attracted, though the question may arise necessarily not at the inception, but even at a subsequent stage. One cannot therefore accede to the request to post-

pone a decision on this question. Postponing a decision on the applicability or otherwise of Section 197(1) CrPC can only lead to the proceedings being dragged on in the trial court and a decision by the Supreme Court, here and now, would be more appropriate in the circumstances of the case especially when the accused involved are police personnel and the nature of the complaint made is kept in mind. (Paras 22 and 11)

Coming to the facts of this case, the question is whether the appellant was acting in his official capacity while the alleged offence was committed or was performing a duty in his capacity as a police officer which led to the offence complained of. That it was the day of election to the State Assembly; that the appellant was in uniform; that the appellant travelled in an official jeep to the spot, near a polling booth and the offence was committed while he was on the spot, may not by themselves attract Section 197(1) CrPC. But, as can be seen from the facts disclosed in the counter-affidavit filed on behalf of the State based on the entries in the general diary of the police station concerned, it emerges that on the election day information was received in the police station at 1400 hours of some disturbance at a polling booth, that it took a violent turn and clashes between the supporters of two political parties were imminent. It was then that the appellant reached the site of the incident in his official vehicle. It is seen that a case had been registered on the basis of the incidents that took place and a report in this behalf had also been sent to the superiors by the Station House Officer. It is also seen and it is supported by the witnesses examined by the Chief Judicial Magistrate while taking cognizance of the offence that the appellant on reaching the spot had a discussion with the officer-in-charge who was stationed at the spot and thereafter a lathi-charge took place or there was an attack on the husband of the complainant and he met with his death. Obviously, it was part of the duty of the appellant to prevent any breach of law and maintain order on the polling day or to prevent the blocking of voters or prevent what has come to be known as booth capturing. It therefore emerges that the act was done while the officer was performing his duty. That the incident took place near a polling booth on an election day has also to be taken note of. The complainant no doubt has a case that it was a case of the deceased being picked and chosen for ill-treatment and he was beaten up by a police constable at the instance of the appellant and the officer in charge of the police station and at their behest. If that complaint were true it will certainly make the action an offence, leading to further consequences. It is also true as pointed out by the complainant that the entries in the general diary remain to be proved. But still, it would be an offence committed during the course of the performance of his duty by the appellant and it would attract Section 197 CrPC. (Para 23)

The High Court has stated that killing of a person by use of excessive force could never be performance of duty. It may be correct so far as it goes. But the question is whether that act was done in the performance of duty or in purported performance of duty. If it was done in performance of duty or purported performance of duty, Section 197(1) CrPC cannot be bypassed by reasoning that killing a man could never be done in an official capacity and consequently Section 197(1) could not be attracted. Such a reasoning would be against the ratio of the earlier decisions of the Supreme Court. The other reason given by the High Court that if the High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, cannot also be a ground to dispense with a statutory requirement or protection. Public trust in the institution can be maintained by entertaining causes coming within its jurisdiction, by performing the duties entrusted to it diligently, in accordance with law and the established procedure and without delay. Dispensing with of jurisdictional or statutory requirements which may ultimately affect the adjudication itself, will itself result in people losing faith in the system. So, the reason in that behalf given by the High Court cannot be sufficient to enable it to get over the jurisdictional requirement of a sanction under Section 197(1) CrPC. (Para 25)

Thus, the High Court was in error in holding that sanction under Section 197(1) CrPC was not needed in this case. It is held that such sanction was necessary and for want of sanction the prosecution must be quashed at this stage. (Para 25)

Per C.K. Thakker, J. (dissenting)

The primary object of the legislature behind Section 197 CrPC is to protect public officers who have acted in discharge of their duties or purported to act in discharge of such duties. But, it is equally well settled that the act said to have been committed by a public officer must have reasonable connection with the duty sought to be discharged by such public officer. If the act complained of has no nexus, reasonable connection or relevance to the official act or duty of such public servant and is otherwise illegal, unlawful or in the nature of an offence, he cannot get shelter of Section 197 CrPC. In other words, protection afforded by the said section is qualified and conditional. (Para 67)

When the question comes up for consideration before a court of law as to the applicability or otherwise of Section 197 CrPC, it is not only the *power* but the *duty* of the court to apply its mind to the fact situation before it. It should ensure that on the one hand,

the public servant is protected if the case is covered by Section 197 CrPC and on the other hand, appropriate action would be allowed to be taken if the provision is not attracted and under the guise of his position as public servant he is trying to take undue advantage. (Para 67)

In the instant case, from the material which has been placed on record, it is amply clear that the appellant and other police officers had acted illegally, unlawfully and high-handedly. In the complaint, it was stated by the widow of deceased that the accused chased her husband and assaulted him by causing several injuries which resulted in his death. That apart, the eyewitnesses stated that the deceased was assaulted and beaten by the accused police officers. The deceased had not indulged in any illegal activity. He had not done any unlawful act. He had no weapon with him. He was distributing food packets at the polling booth of a particular political party. (Para 70)

The High Court was wholly justified in observing that "it was a merciless beating by a police officer" causing death of a person which could not be said to be an act in discharge of official duty. The High Court was also right in stating that the post-mortem report clearly indicated the nature and extent of injuries on the victim. Other witnesses had given vivid description of the offence committed by the accused persons. The said finding, which is supported by material on record, cannot be said to be based on "no evidence" or otherwise perverse, nor can it be concluded that an error of law has been committed by the High Court which requires to be corrected by the Supreme Court in exercise of discretionary jurisdiction under Article 136 of the Constitution. Hence, no interference is called for against the order of the High Court. (Para 74). *Sankaran Moitra* v. *Sadhna Das*, (2006) 4 SCC 584: (2006) 2 SCC (Cri) 358: AIR 2006 SC 1599.

Bench Strength **3**. Coram: *Y.K. Sabharwal, C.J.*[1] and **C.K. Thakker**[2] and **P.K. Balasubramanyan**[1], JJ. [Date of decision: 24-3-2006]

Matajog Dobey v. H.C. Bhari, (1955) 2 SCR 925: AIR 1956 SC 44: 1956 Cri LJ 140; Rizwan Ahmed Javed Shaikh v. Jammal Patel, (2001) 5 SCC 7, applied

Sankaran Moitra v. Sadhana Das, (2003) 4 Cal HN 82, reversed

— S. 197 — Grant of sanction under — Nature of exercise involved — Position contrasted with that obtaining under S. 19, PC Act, 1988 *See* PREVENTION OF CORRUPTION ACT, 1988, S. 19, (2007) 1 SCC 49

— S. 197 — Sanction for prosecution in case public servant is no longer holding the post/office during the currency of which the alleged offence was committed — Need for — Position obtaining under S. 197 contrasted with that obtaining under S. 19 PC Act, 1988 *See* PREVENTION OF CORRUPTION ACT, 1988, S. 19, (2007) 1 SCC 49

[209] — S. 197 — Sanction for prosecution — Quashment of — When permissible — Accused being charged for offences under IPC and Prevention of Corruption Act (PC Act) — *Entire sanction quashed by State where competent authority specified in PC Act granted sanction under PC Act and also under S. 197 CrPC for offences under IPC, wherefor the State was the competent authority — Propriety of — Held, said quashment by State not proper — State could not have interfered with that part of the order whereby requisite sanction was granted under PC Act — Plea that said sanction was a composite one and, thus, State could cancel the same, held, not sustainable — Prevention of Corruption Act, 1988, S. 19 — Prevention of Corruption Act, 1947, S. 6*

The first respondent *R*, who was a Sub-Inspector at the relevant time, lodged an FIR under the Essential Commodities Act against the agency of the son of the appellant. In that FIR it was alleged that on an inspection made in the office and the godown of the agency, several irregularities were found and some gas cylinders were found to have been sold in black market. The appellant in a letter addressed to the Inspector General of Police alleged that the case registered was false, that while seizing the cylinders, *R* misappropriated 24 cylinders and that *R* had demanded and taken a sum of Rs 20,000 in cash from the appellant by way of illegal gratification by putting pressure and the said amount was paid to him in order to avoid maltreatment at his hands. The prosecution against the agency was found to be false and a final report under Section 173 CrPC was submitted for cancellation of the case which was accepted on 11-8-1993.

On the basis of the said allegations contained in the appellant's letter, an FIR was lodged. *R* was charged with offences under Sections 409, 167, 218, 419, 420, 465, 463 and 471 IPC and under Section 13(*d*), Prevention of Corruption Act, 1988. However, upon investigation an untraced report was sent to the Court of Special Judge, who did not agree therewith and by an order dated 23-5-1998 opined that the statements of the witnesses recorded during investigation supported the case of the complainant and the matter required judicial verdict. The Special Judge, therefore, directed the investigating officer to obtain sanction for prosecution against *R* and submit a final report. The said order was challenged in revision wherein it was observed that no cognizance could be taken by the Special Judge without obtaining proper sanction and it would be open to the sanctioning authority to consider the same. In the meanwhile, *R* was promoted as Inspector. The Deputy Inspector General of Police issued an order granting sanction under Section 197 CrPC and under Section 19 of the Prevention of Corruption Act, 1988 so that the com-

petent court could take legal action against *R*. However, the said order of sanction was withdrawn by the State vide order dated 10-12-1999. The State observed that under Section 197 CrPC only the Government was competent to accord prosecution sanction. Therefore, the prosecution accorded by the Deputy Inspector General of Police was cancelled by the State. Thereafter, the Special Judge observed that sanction was required only under Section 19 of the Prevention of Corruption Act, and not under Section 197 CrPC. Even otherwise, the sanction had already been granted by the competent authority. Thus, it was held that there being sanction and statements of the witnesses supporting the case of the complainant, it was desirable that the judicial verdict should come. Therefore, the Special Judge by an order dated 18-4-2000 directed the investigating officer to submit a final report within one month.

The aforesaid judgment was challenged before the High Court. The High Court vide order dated 23-7-2001 set aside the time-bound directions of the Special Judge. The investigating agency was given liberty to continue the investigation and proceed in accordance with law.

Thereafter, a charge-sheet was filed and cognizance of the offence was taken. *R* filed an application under Section 482 CrPC for quashing of FIR and subsequent proceedings. The High Court observed that (*i*) the said order dated 23-7-2001 attained finality and, thus, any contention contrary thereto or inconsistent therewith would amount to reviewing thereof which was impermissible in law; (*ii*) the State having refused to grant a sanction and as the accusations made against *R* related to discharge of his duties as investigating officer, sanction of prosecution was mandatory; (*iii*) the first information report could not be quashed as it could not be said that the allegations made therein did not disclose any offence against him. Thus, the High Court held that the order taking cognizance and summoning *R* without sanction of the competent authority was liable to be quashed. Hence the present appeal.

Allowing the appeal,

Held :

Sanction required under Section 197 CrPC and sanction required under the 1988 Act stand on different footings. Whereas sanction under the Penal Code in terms of the Code of Criminal Procedure is required to be granted by the State; under the 1988 Act it can be granted also by the authorities specified in Section 19 thereof. (Para 11)

It is not in dispute that the Deputy Inspector General of Police was the competent authority for grant of sanction as against the respondent *R* in terms of the provisions of the 1988 Act. The State, thus, could not have interfered with that part of the said order whereby requisite sanction had been granted under the 1988 Act. The contention to the effect that the order of sanction passed by the Deputy Inspector General of Police was a composite one and, thus, the State could cancel the same, is unacceptable. Offences under the Penal Code and offences under the 1988 Act are different and distinct. On the face of the allegations made against *R*, they do not have any immediate or proximate connection. The test which is required to be applied in such a case is as to whether the offences for one reason or the other punishable under the Penal Code are also required to be proved in relation to offences punishable under the 1988 Act. If the answer to the said question is rendered in the negative, the same test can be applied in relation to a matter of sanction. (Para 12)

The High Court in its impugned order, however, does not appear to have taken that aspect of the matter into consideration. It failed to make a distinction between an order of sanction required for prosecuting a person for commission of an offence under the Penal Code and an order of sanction required for commission of an offence under the 1988 Act. (Para 13). *Romesh Lal Jain* v. *Naginder Singh Rana*, (2006) 1 SCC 294: (2006) 2 SCC (Cri) 593: AIR 2006 SC 336: 2005 Cri LJ 5068.

Bench Strength **2**. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 28-10-2005]

Naginder Singh Rana v. State of Punjab, 2002 Cri LJ 3124 (P&H), reversed

[210] — S. 197 — Sanction for prosecution of appellant police officer for conducting a search without warrant (though other procedures followed) — Need for — *Search of residential premises of R-2 conducted by police team headed by appellant on basis of report received by appellant as to commission of dacoity, in which R-2's son was implicated, with a view to arrest the said son — Alleging that search was motivated and was for purpose of humiliating and harassing R-2 and his son, as no search warrant had been obtained, complaint filed by R-2 — Whereupon, Magistrate taking cognizance of offences under Ss. 342, 389, 469, 471 and 120-B IPC against appellant, without sanction under S. 197 having been obtained — Order of Magistrate upheld by High Court — Sustainability — Held, High Court was not justified in holding that S. 197 was not applicable — It only focussed on absence of search warrant and totally ignored other relevant aspects, which had a determinative role in the issue — Hence order of Magistrate taking cognizance set aside — Penal Code, 1860, Ss. 342, 389, 469, 471 and 120-B* (Paras 21 and 22). *Rakesh Kumar Mishra* v. *State of Bihar*, (2006) 1

SCC 557: (2006) 1 SCC (Cri) 432: AIR 2006 SC 820: 2006 Cri LJ 808: (2006) 2 KLT 26.

Bench Strength **2**. Coram: **Arijit Pasayat** and *G.P. Mathur*, JJ. [Date of decision: 3-1-2006]

[211] — S. 197 — Sanction under, for prosecution — When necessary — Question as to sanction — Consideration of — Stage for — *Held, sanction is required to be obtained when the offence complained of against the public servant is attributable to the discharge of his public duty or has a direct nexus therewith — Sanction not necessary when the offence complained of has nothing to do with the discharge of his duty — Plea relating to want of sanction, though desirably should be considered at an early stage of the proceedings, can be considered at a later stage, even after the witnesses are examined — Cases in which question as to sanction to be taken note of at the outset or at a later stage, indicated — However held, each case to be considered on its own facts and circumstances and no hard-and-fast rule can be laid down in this regard — Offences under Prevention of Corruption Act, 1988 and IPC — No sanction under S. 197 was necessary to be obtained from the State — Further, valid sanction granted in respect of offences under the 1988 Act — Hence, High Court's order quashing cognizance on ground of absence of sanction by competent authority, held, not proper*

Whereas an order of sanction in terms of Section 197 CrPC is required to be obtained when the offence complained of against the public servant is attributable to the discharge of his public duty or has a direct nexus therewith, but the same would not be necessary when the offence complained of has nothing to do with the same. A plea relating to want of sanction although desirably should be considered at an early stage of the proceedings, but the same would not mean that the accused cannot take the said plea or the court cannot consider the same at a later stage. Each case has to be considered on its own facts. Furthermore, there may be cases where the question as to whether the sanction was required to be obtained or not would not be possible to be determined unless some evidence is taken, and in such an event, the said question may have to be considered even after the witnesses are examined. (Para 33)

In a case where ex facie no order of sanction has been issued when it is admittedly a prerequisite for taking cognizance of the offences or where such an order apparently has been passed by the authority not competent therefor, the court may take note thereof at the outset. But where the validity or otherwise of an order of sanction is required to be considered having regard to the facts and circumstances of the case and furthermore when a contention has to be gone into as to whether the act alleged against the accused has any direct nexus with the discharge of his official act, it may be permissible in a given situation for the court to examine the said question at a later stage. (Para 38)

It is added that the Supreme Court in the present case does not intend to lay down a law that only because a contention has been raised by the complainant or the prosecution that the question as regards necessity of obtaining an order of sanction is dependent upon the finding of fact that the nexus between the offences alleged and the official duty will have to be found out upon analysing the evidences brought on record; the same cannot be done at an earlier stage. Each case will have to be considered having regard to the fact situation obtaining therein and no hard-and-fast rule can be laid down therefor. The question as to whether sanction is necessary or not, thus, in an appropriate case, may have to be determined at different stages. There are cases where the question of validity of sanction has been raised at the trial and the courts have passed appropriate orders upon arriving at a conclusion that the order of sanction was defective. (Paras 39, 41 and 40)

The raid and seizure conducted by the accused police officer in the office and godown of the appellant were made on 18-3-1992. Seizure of gas cylinders and the lodgement of the first information report are no doubt acts of official capacity; but undoubtedly the prosecution was withdrawn on the ground that the same was false. It is in the aforementioned context also the question of criminal breach of trust and other allegations made against the accused as also demand and acceptance of a sum of Rs 20,000 by him may have to be viewed. (Para 34)

Thus, having regard to the facts and circumstances of the case and keeping in view the decision of the Supreme Court, no order of sanction to prosecute the accused under Section 197 CrPC was necessary to be obtained from the State. Therefore, the High Court was not right in passing the impugned order particularly in view of the fact that a valid order of sanction was granted in relation to the offences committed by the accused under the 1988 Act. (Paras 43 and 44). *Romesh Lal Jain* v. *Naginder Singh Rana*, (2006) 1 SCC 294: (2006) 2 SCC (Cri) 593: AIR 2006 SC 336: 2005 Cri LJ 5068.

Bench Strength **2**. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 28-10-2005]

Shreekantiah Ramayya Munipalli v. State of Bombay, (1955) 1 SCR 1177: AIR 1955 SC 287: 1955 Cri LJ 857; P.K. Pradhan v. State of Sikkim, (2001) 6 SCC 704: 2001 SCC (Cri) 1234; Matajog Dobey v. H.C. Bhari, (1955) 2 SCR 925: AIR 1956 SC 44: 1956 Cri LJ 140; State of H.P. v. M.P. Gupta, (2004) 2 SCC 349: 2004 SCC (Cri) 539; Harihar Prasad v. State of Bihar, (1972) 3 SCC 89: 1972 SCC (Cri) 409; N. Bhargavan Pillai v. State of Kerala, 2005 SCC (Cri) 142; State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC

40: 2004 SCC (Cri) 2104; S.K. Zutshi v. Bimal Debnath, (2004) 8 SCC 31: 2004 SCC (Cri) 2096; K. Kalimuthu v. State, (2005) 4 SCC 512: 2005 SCC (Cri) 1291; B.S. Sambhu v. T.S. Krishnaswamy, (1983) 1 SCC 11: 1983 SCC (Cri) 125; Om Prakash Gupta v. State of U.P., 1957 SCR 423: AIR 1957 SC 458: 1957 Cri LJ 575; Manohar Nath Kaul v. State of J&K, (1983) 3 SCC 429: 1983 SCC (Cri) 647; B. Saha v. M.S. Kochar, (1979) 4 SCC 177: 1979 SCC (Cri) 939; State of Maharashtra v. Atma Ram, AIR 1966 SC 1786: 1966 Cri LJ 1498; Baijnath Gupta v. State of M.P., (1966) 1 SCR 210: AIR 1966 SC 220: 1966 Cri LJ 179; Amrik Singh v. State of Pepsu, (1955) 1 SCR 1302: AIR 1955 SC 309: 1955 Cri LJ 865; Hori Ram (Dr.) v. Emperor, 1939 FCR 159: AIR 1939 FC 43: 40 Cri LJ 468, followed

Abdul Wahab Ansari v. State of Bihar, (2000) 8 SCC 500: 2001 SCC (Cri) 18, distinguished on facts

[212] — Ss. 197 and 245 — Requirement under S. 197 to obtain sanction to prosecute a public servant — Invocation of said provision — Conditions for — Existence of reasonable connection between the act in question and the discharge of official duty — Necessity of — Stage at which S. 197 could be invoked — *Law relating to in this regard, reiterated — Whether on facts the prosecution of appellant public servant without obtaining sanction under S. 197 in respect thereof was proper — Wife of respondent running a kiosk in hospital premises — Govt. deciding to remove the said kiosk as it was causing inconvenience to public and also causing health hazards by supplying unhygienic food — Said decision of Govt. later held by Supreme Court to be valid — In pursuance of the said Govt. order, appellant removing the said kiosk on direction of Executive Engineer T — Filing of complaint under Ss. 166, 448, 427, 380, 392 and 506(II) IPC against Dean of Medical College — Though appellant was known to complainant personally, his name not appearing in complaint — Appellant made accused when his name taken by T in his statement during investigation — No allegation against appellant either in complaint or in statement of complainant under S. 161 CrPC — No material to show commission of alleged crime by appellant — On these facts, held, no case made out against appellant — Further, even if charge-sheet filed against him was accepted to be correct, sanction under S. 197 CrPC was necessary in the present case — Hence, order of High Court setting aside the order of Magistrate which discharged the appellant, not sustainable*

The wife of Respondent 1 was running a kiosk in a hospital premises. The State Government concerned took a policy decision to remove all kiosks, bunks and tea stalls, etc. from the hospital premises as they were causing inconvenience to the public and were also causing health hazards as food stuffs supplied from the said kiosks, bunks and tea stalls were prepared in unhygienic conditions. In pursuance thereof, a government order was issued for removing all the said kiosks. The Public Works Department issued directions to the Executive Engineer to take steps for the said removal. The wife of Respondent 1 was requested through a letter by the Executive Engineer to remove her tea stall. The Executive Engineer *T* directed the appellant to remove the said tea stall. Pursuant to the said direction, the appellant requested the Assistant Commissioner of Police to give police protection for the purpose of causing such removal.

A writ petition was filed by the wife of Respondent 1, which was disposed of by the High Court with certain directions. In the meanwhile, however, the said tea stall was removed whereupon a contempt petition was filed against the appellant. The said contempt petition was dismissed. The matter thereupon came before the Supreme Court. The Supreme Court decided the said matter on 21-2-1997 by holding that the reasons given by the State for removing the bunks/kiosks were reasonable and acceptable. The act of removal was not in any manner inconsistent with the propositions enunciated in the judgment of the High Court.

Thereafter, a complaint petition was filed by Respondent 1 against the Dean of the Medical College under Sections 166, 448, 427, 380, 392 and 506(II) IPC. The Magistrate sent the complaint petition for inquiry to the police authority whereupon a FIR was lodged. It was during investigation that the name of the appellant was taken by *T*. In respect of the appellant, *T* in his statement said only that the appellant had informed him by his letter dated 2-7-1997 that he had removed the stall of the wife of Respondent 1 on 1-7-1997. It was also stated that the appellant had engaged men on his own supervision and removed the shop. On the basis of the said statement, the appellant was made an accused and a charge-sheet was filed against him also. In the said charge-sheet only the allegations made in the complaint petition were repeated. What transpired during investigation had not been disclosed. The Magistrate took cognizance against the appellant herein on the basis of the said purported charge-sheet. The IO had noticed that removal of the tea shop was effected as per an order of a court of law. Validity or otherwise of the action on the part of the appellant was not in question. Thereafter, an application for discharge was filed before the Magistrate by the appellant, *inter alia*, on the ground that no sanction was obtained as was required mandatorily in terms of Section 197 CrPC. The Magistrate allowed the said application. He observed that the act of the appellant was in compliance with the order of *T*. The case against him was baseless. He was a government servant, but no permission under Section 197 had been obtained to prosecute him. The revision petition filed by Respondent 1 before the

High Court against the said order was allowed. Hence, the present appeal.

Allowing the appeal,

Held :

In *Matajog Dobey*, (1955) 2 SCR 925 the Constitution Bench of the Supreme Court held that Section 197 CrPC would be attracted if the offence alleged to have been committed (by the accused) must have something to do or must be related in some manner with the discharge of official duty. There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable (claim), but not a pretended or fanciful claim, that he did it in the course of the performance of his duty. Whether for prosecution of a public servant sanction is necessary to be obtained or not would depend upon the facts and circumstances of each case. Similarly, whether in view of the allegations made in the complaint an order of sanction would be essential or not would again depend upon the facts and circumstances of each case. Further, in *Romesh Lal Jain*, (2006) 1 SCC 294 it was held that the question as to whether sanction is necessary or not, that may be appropriately raised at different stages of the case depending upon the allegations made in the complaint. (Paras 13, 14 and 16)

In the present case, no court has declared the policy decision of removal of kiosks, tea stalls and bunks from the hospital premises to be *ultra vires*. Further, the validity of such a policy decision has been upheld in *N. Jagadeesan*, (1997) 4 SCC 508. (Para 10)

If, in the aforementioned situation, the appellant only complied with the order of *T* asking him to remove the said tea stall, he cannot be said to have committed any offence whatsoever. (Para 11)

The statement of *T*, on the basis whereof the appellant had been charge-sheeted, even if given face value and taken to be correct in its entirety does not disclose an offence. Respondent 1, in view of the fact that a contempt petition was filed against the appellant, presumably knew him personally. Despite the same, he had not been named in the complaint petition. No allegation had been made against him either in his complaint or in his statement under Section 161 CrPC that he had transgressed his authority or committed the alleged crime. (Para 12)

Hence the impugned order cannot be sustained as:

(*i*) no case was made out to frame charges against the appellant.

(*ii*) even if the statement of *T* on the basis whereof the charge-sheet has been filed against the appellant is accepted to be correct, sanction for prosecution of the appellant, as envisaged under Section 197 CrPC in the facts and circumstances of this case was necessary. The High Court, therefore, was not correct in allowing the revision case filed by Respondent 1. (Paras 18, 13 to 17 and 19). *Jayasingh* v. *K.K. Velayutham*, (2006) 9 SCC 414: (2006) 2 SCC (Cri) 573: AIR 2006 SC 2407: 2006 Cri LJ 3272.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 25-4-2006]

[213] — Ss. 197 and 420, 467, 468, 471 and 120-B, Penal Code, 1860 — Offences for which sanction required under S. 197 — *Held, no sanction for prosecution is necessary for offences under Ss. 420, 467, 468, 471 and 120-B, Penal Code, 1860*

The offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120-B, Penal Code, 1860 can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence. (Para 50). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

Rakesh Kumar Mishra v. State of Bihar, (2006) 1 SCC 557: (2006) 1 SCC (Cri) 432, distinguished

— S. 198(1) proviso (c) *See also* Ss. 198(1) proviso (c) and 482

[214] — Ss. 198(1) proviso (c) and 482 — Sustainability of prosecution under S. 494 IPC — Statement of subsequent wife — Relevance — *Complaint against husband for offence of bigamy filed by father of subsequent wife allegedly on her behalf but against her express desire stated in her sworn written statement — She was a major when she married of her own free will and that she was living happily and peacefully thereafter — Initiation of prosecution in such circumstances, held, was improper — Magistrate was not justified in taking cognizance of the said offence — Since husband and his wife staying together happily, further prosecution would only harass the accused — Hence, proceedings quashed — Penal Code, 1860, Ss. 494 and 420* (Para 4). *Manish Das (Dr.)* v. *State of U.P.*, (2006) 6 SCC 536: (2006) 3 SCC (Cri) 113.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *D.K. Jain*, JJ. [Date of decision: 14-7-2006]

— S. 199 *See* Ss. 190, 193 and 195 to 199 and 204
See also Ss. 257, 199 and 482

— S. 200 *See also* Ss. 154, 156, 190, 200 and 203
See also Ss. 154, 156, 190 and 200 to 203
See also Ss. 190, 173(2), 169, 200, 202 and 204
See also Ss. 190, 200 and 157
See also Ss. 190(1), 173(2), 169, 200 and 202

[215] — **S. 200 — Statutory requirements** — *Held, the complainant is bound to make statements on oath as to how the offence was committed and how the accused persons were responsible therefor — In the event of frivolous or mala fide prosecution of the accused, the court may direct registration of case against the complainant for the same — Accused would also be entitled to file a suit for damages — Negotiable Instruments Act, 1881, Ss. 138, 139 and 141* (Para 7). *Sabitha Ramamurthy* v. *R.B.S. Channabasavaradhya*, (2006) 10 SCC 581: (2007) 1 SCC (Cri) 621: AIR 2006 SC 3086: 2006 Cri LJ 4602.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 13-9-2006]

— **S. 201** *See* Ss. 154, 156, 190 and 200 to 203

— **S. 202** *See* Ss. 154, 156, 190 and 200 to 203

See also Ss. 156 and 202

See also Ss. 190, 173(2), 169, 200, 202 and 204

See also Ss. 190(1), 173(2), 169, 200 and 202

— **S. 203** *See also* Ss. 154, 156, 190 and 200 to 203

[216] — **Ss. 203 and 482 — Application under S. 203 for review of order of subordinate criminal court, held, not maintainable — Proper course would be invocation of S. 482** (Para 22). *N.K. Sharma* v. *Abhimanyu*, (2005) 13 SCC 213: (2006) 2 SCC (Cri) 135: AIR 2005 SC 4303: 2005 Cri LJ 4529: (2005) 4 KLT 738.

Bench Strength **2**. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 7-10-2005]

— **S. 204** *See also* Ss. 190, 173(2), 169, 200, 202 and 204

See also Ss. 190, 193 and 195 to 199 and 204

See also Ss. 482, 190 and 204

See also Ss. 482, 190(1)(b), 204, 173, 169 and 362

[217] — **S. 204 — Before issuing summons court should insist upon strict compliance with the statutory requirements** (Para 7). *Sabitha Ramamurthy* v. *R.B.S. Channabasavaradhya*, (2006) 10 SCC 581: (2007) 1 SCC (Cri) 621: AIR 2006 SC 3086: 2006 Cri LJ 4602.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 13-9-2006]

Monaben Ketanbhai Shah v. State of Gujarat, (2004) 7 SCC 15: 2004 SCC (Cri) 1857; Katta Sujatha v. Fertilizers & Chemicals Travancore Ltd., (2002) 7 SCC 655: 2003 SCC (Cri) 151; S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89: 2005 SCC (Cri) 1975, followed

— **Ss. 205, 206 and 382** *See* PRACTICE AND PROCEDURE — 'Vakalatnama', (2006) 3 SCC 374

— **S. 206** *See* Ss. 205, 206 and 38

[218] — **S. 210 — Provision under, regarding stay of complaint case where there is complaint case and police investigation in respect of same offence — Object and conditions to be satisfied for invocation of — Restated** — *In the present case no contention regarding the said conditions raised before High Court — Magistrate proceeded with complaint on being satisfied with the materials placed on record — No illegality therein — Further, High Court in an earlier order observed that S. 210 could not arrest the proceedings of complaint case as the basic tenor of the said case and police investigation was different — SLP against the said order already dismissed by Supreme Court — On these facts, held (per C.K. Thakker, J.), S. 210 not attracted to the present case*

Per Thakker, J.

Section 210 CrPC has no application to the facts of the case on hand. (Para 75)

A bare reading of the above provision makes it clear that during an inquiry or trial relating to a complaint case, if it is brought to the notice of the Magistrate that an investigation by the police is in progress in respect of the same offence, he shall stay the proceedings of the complaint case and call for the record of the police officer conducting the investigation. (Para 76)

The object of Section 210 is threefold:

(*i*) it is intended to ensure that private complaints do not interfere with the course of justice;

(*ii*) it prevents harassment to the accused twice; and

(*iii*) it obviates anomalies which might arise from taking cognizance of the same offence more than once. (Para 77)

Before Section 210 can be invoked, the following conditions must be satisfied.

(*i*) there must be a complaint pending for inquiry or trial;

(*ii*) investigation by the police must be in progress in relation to the same offence;

(*iii*) a report must have been made by the police officer under Section 173; and

(*iv*) the Magistrate must have taken cognizance of an offence against a person who is accused in the complaint case. (Para 79)

In the impugned order passed by the High Court, no such contention appears to have been raised by the appellant. On the basis of the complaint filed by the complainant and on being satisfied on the material placed on record, the learned Chief Judicial Magistrate had proceeded with the case which cannot be said to be illegal. (Para 80)

It may also be stated here that the High Court in its order dated 20-6-2003 considered this contention and observed that Section 210 could not arrest the proceedings initiated by the complainant, since the "basic tenor of the two cases was different". The special leave petition against the order of the High Court was dismissed by the Supreme Court on 28-7-2003. Even

this ground, therefore, cannot take the case of the appellant anywhere. (Para 81). *Sankaran Moitra* v. *Sadhna Das*, (2006) 4 SCC 584: (2006) 2 SCC (Cri) 358: AIR 2006 SC 1599.

Bench Strength **3**. Coram: *Y.K. Sabharwal, C.J.*[1] and **C.K. Thakker**[2] and **P.K. Balasubramanyan**[1], JJ. [Date of decision: 24-3-2006]

[219] — Ss. 215, 173, 220 & 228 — Charge-sheet and police report — Nature of police report — *Information supplied in police report and description of how the various offences were made out on the facts in charge-sheet — Detail, specificity and clarity required — Duty of court at stage of framing charge, reiterated — Penal Code, 1860, S. 72 — Applicability*

A plea has been taken that charge-sheet is a bundle of confusions and no definite material is placed on record to substantiate the allegation of commission of any offence. This assertion has been adequately refuted by the respondent State with regard to various definite materials indicating commission of offence, which have been pointed out. (Para 40)

The report in terms of Section 173 CrPC is in the nature of information to the Magistrate. Statutory requirement is complied with if the requisite information is given. It purports to be an opinion and therefore elaborate details are not necessary. Mere non-description of the offences in detail is really not material. (Paras 43 and 44)

It would not be desirable to analyse minutely the materials at the stage when the charge is framed. At this stage the court is primarily concerned with the question as to whether a charge is to be framed in respect of any offence and whether prima facie there appears existence of any material and not the sufficiency of the materials. Therefore, the appellants' stand that the charge-sheet does not refer to any particular material cannot be accepted, more particularly, in view of the specific materials referred to by the respondent State. (Para 45). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

— Ss. 215 and 228 — Framing of charge-sheet with respect to offences under various clauses of S. 13(1), Prevention of Corruption Act, 1988 — Necessity to mention each clause *See* PREVENTION OF CORRUPTION ACT, 1988, Ss. 19 and 13, (2007) 1 SCC 1

[220] — S. 216 — Addition of charge relating to dowry death [S. 304-B, IPC] during trial — *Death certificate already filed indicating probable cause of death to be cardio-respiratory failure due to acute respiratory failure — Production of another death certificate by prosecution which was issued by same doctor indicating a different cause of death — Objection raised against, by accused — Matter relating to production of subsequent certificate kept in abeyance to be decided after examination of doctor — However, on the same date, trial court allowing application filed for addition of charge under S. 304-B — Presence of certain chemicals in viscera was noted by trial court — Effect of, was to be considered in the background of both the certificates, in case the latter certificate was taken on record — Hence held, it would be proper for trial court to defer the question of framing charge under S. 304-B after examination of the doctor and relevance of the subsequent certificate and its acceptability — Penal Code, 1860, S. 304-B — Dowry death — Addition of charge relating to*

There is no quarrel with the proposition that the charge can be altered at any stage. But the question is whether in view of the order passed on the same date the order relating to alteration of charge has been passed by the trial court. The trial court itself noted that as per the first certificate the cause of death was cardio-respiratory failure due to acute respiratory failure. It, however, noted that some chemicals were noted in the viscera. The effect of the presence of those chemicals has necessarily to be considered in the background of both the certificates, in case the latter certificate is taken on record. That being so, it would be proper for the trial court to defer the question of framing charge under Section 304-B after examination of the doctor and relevance of the subsequent certificate and its acceptability. (Para 7). *Ishwarchand Amichand Govadia* v. *State of Maharashtra*, (2006) 10 SCC 322: (2006) 3 SCC (Cri) 554.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 13-10-2006]

[221] — S. 216(2) — Alteration of charge — *Held, though the power of the court to alter charges is undisputed, but it is obligatory on the court to bring the same to the notice of the accused and explain it to him — In the instant case alteration of charge not read and explained to accused — Held, requirements of S. 216(2) not complied with* (Paras 18 and 19). *Sabbi Mallesu* v. *State of A.P.*, (2006) 10 SCC 543: (2007) 1 SCC (Cri) 142: AIR 2006 SC 2747: 2006 Cri LJ 4038.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 12-7-2006]

— S. 220 *See* Ss. 215, 173, 220 and 228

— S. 220 — Applicability *See* PREVENTION OF CORRUPTION ACT, 1988, Ss. 7 and 13(1)(d), (2006) 11 SCC 473

[222] — S. 222 — Applicability of — Conviction where major offence not proved, but minor offence in respect of which no charge was framed is established — *Accused charged only under Ss. 376/511*

IPC — Said offence not made out — However, ingredients of minor offences under Ss. 366 and 354 IPC present — Held, accused could be convicted under Ss. 366 and 354 IPC by invoking S. 222 CrPC — Penal Code, 1860 — Sections 375 and 376 — Rape — Conviction, Ss. 376/511, 366 and 354 — Charge framed under Ss. 376/511, but convicted under Ss. 366 and 354

In the instant case, the accused has been charged with Sections 376/511 IPC only. But, the offence committed does not come within the purview of offence punishable under Sections 376/511 IPC. In the absence of charge under any other section, the question now arises — whether the accused should be acquitted; or whether he should be convicted for committing any other offence pertaining to forcibly outraging the modesty of a girl. In a situation like this, Section 222 CrPC would be invoked which provides that in a case where the accused is charged with a major offence and the said charge is not proved, the accused may be convicted of the minor offence, though he was not charged with it. (Paras 23 and 36)

In the present case, the offence committed squarely covers the ingredients of Sections 366 and 354 IPC. The appellant is clearly guilty of the offences under Sections 366 and 354 IPC. (Paras 36 and 59). *Tarkeshwar Sahu* v. *State of Bihar (Now Jharkhand)*, (2006) 8 SCC 560: (2006) 3 SCC (Cri) 556.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

[223] — Ss. 227, 228(1)(b) and 397/401 — Discharge of accused — When not justified — Test — *Whether there was sufficient ground for proceeding against the accused or presuming that accused had committed an offence — FIR showing that three accused came at the spot armed with firearms and after giving exhortation to kill* **H** *and others resorted to firing as a result of which* **H** *and a girl belonging to Scheduled Caste who had come there to purchase some articles died — During course of investigation name of Respondent 2 also appeared and some witnesses stated under S. 161 CrPC that one of the accused handed over his rifle to Respondent 2 who ran away from the spot — Trial court framed charges against Respondent 2 under S. 302 read with S. 34 IPC and S. 3(2)(v) of the SC and ST (Prevention of Atrocities) Act — Respondent 2 filed revision under Ss. 397/401 before High Court challenging the order framing the charges — High Court set aside the order for the reason that the firing was not aimed at the deceased girl but she received the fatal injuries accidentally — Held, reason for setting aside the order wholly erroneous and unsustainable — High Court failed to apply the relevant test for judging validity of trial court's order directing framing of charges — High Court ignored provisions of S. 301 IPC — Prosecution case that Respondent 2 ran away from the scene after an accused handed over his rifle to him also shows commission of offence under S. 201 IPC — Since two persons had been killed, there should be separate and distinct charge for each murder besides charge under S. 3(2)(v) of the SC/ST Act — In the circumstances, order of discharge not sustainable and Respondent 2 must face the trial. Rajbir Singh* v. *State of U.P.*, (2006) 4 SCC 51: (2006) 2 SCC (Cri) 209: AIR 2006 SC 1963: 2006 Cri LJ 2458.

Bench Strength **2**. Coram: *Arun Kumar* and **G.P. Mathur**, JJ. [Date of decision: 8-3-2006]

[224] — Ss. 227, 239 & 245 and 228 & 240 — Discharge of accused — Requirement of recording of reasons in respect of — *Framing of charge, forming of opinion in case of — Difference in the requirements, explained — Reason therefor, explainedHeld, the moment discharge order is passed, it is imperative to record reasons — However, charge(s) may be framed without recording reasons for showing why the charge(s) were framed*

The question relating to forming of an opinion at the time of framing of charge is different from a case of recording of reasons on the basis of which an order of discharge of the accused may be passed. The moment the order of discharge is passed it is imperative to record the reasons. But for framing of charge the court is required to form an opinion that there is ground for presuming that the accused has committed the offence. In case of discharge of the accused the use of the expression "reasons" has been inserted in Sections 227, 239 and 245 CrPC. At the stage of framing of a charge the expression used is "opinion". The reason is obvious. If the reasons are recorded in case of framing of charge, there is likelihood of prejudicing the case of the accused put on trial. The Judge is required to record reasons only if he decides to discharge the accused. But if he is to frame the charge he may do so without recording his reasons for showing why he framed the charge. But where the question of jurisdiction is raised and the trial court is required to adjudicate that issue, it cannot be said that reasons are not to be recorded. In such a case reasons relate to question of jurisdiction and not necessarily to the issue relating to framing of charge. In such a case reasons dealing with a plea relating to jurisdiction have to be recorded. (Paras 13, 15 and 16). *Lalu Prasad* v. *State of Bihar*, (2007) 1 SCC 49: (2007) 1 SCC (Cri) 241.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

State of Bihar v. Ramesh Singh, (1977) 4 SCC 39: 1977 SCC (Cri) 533; Kanti Bhadra Shah v. State of W.B., (2000) 1 SCC 722: 2000 SCC (Cri) 303, followed

— **S. 228** *See also* Ss. 215, 173, 220 and 228

See also Ss. 215 and 228

See also Ss. 227, 239 and 245 and 228 and 240

[225] — Ss. 228 & 240 and Ch. III (Ss. 26 to 35) — Framing of charge and determination of jurisdiction of court — Recording of reasons — Difference in the requirement, explained — *Held, though charge(s) can be framed without recording reasons, where a question of jurisdiction is raised, and court is required to adjudicate the same, the court must record reasons relating to the question of jurisdiction*

The question relating to forming of an opinion at the time of framing of charge is different from a case of recording of reasons on the basis of which an order of discharge of the accused may be passed. The moment the order of discharge is passed it is imperative to record the reasons. But for framing of charge the court is required to form an opinion that there is ground for presuming that the accused has committed the offence. In case of discharge of the accused the use of the expression "reasons" has been inserted in Sections 227, 239 and 245 CrPC. At the stage of framing of a charge the expression used is "opinion". The reason is obvious. If the reasons are recorded in case of framing of charge, there is likelihood of prejudicing the case of the accused put on trial. The Judge is required to record reasons only if he decides to discharge the accused. But if he is to frame the charge he may do so without recording his reasons for showing why he framed the charge. But where the question of jurisdiction is raised and the trial court is required to adjudicate that issue, it cannot be said that reasons are not to be recorded. In such a case reasons relate to question of jurisdiction and not necessarily to the issue relating to framing of charge. In such a case reasons dealing with a plea relating to jurisdiction have to be recorded. (Paras 13, 15 and 16). *Lalu Prasad* v. *State of Bihar*, (2007) 1 SCC 49: (2007) 1 SCC (Cri) 241.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

State of Bihar v. Ramesh Singh, (1977) 4 SCC 39: 1977 SCC (Cri) 533; Kanti Bhadra Shah v. State of W.B., (2000) 1 SCC 722: 2000 SCC (Cri) 303, followed

— **Ss. 231 and 242** *See* CRIMINAL TRIAL — 'Appreciation of evidence' — Non-examination of witnesses, (2006) 1 SCC 191

— **S. 228(1)(b)** *See* Ss. 227, 228(1)(b) and 397/401

— **S. 231** *See* Ss. 391, 311, 386, 231, 242, 244, 233, 243 and 247

— **S. 233** *See* Ss. 391, 311, 386, 231, 242, 244, 233, 243 and 247

[226] — Ss. 233(3) and 311 — Defence witness — Prosecution witness when may be called as — *Accused's application for compelling attendance of any prosecution witness, who had been examined, cross-examined and discharged, to be juxtaposed as defence witness, held, not maintainable — Court has power to reject such application on ground that it is made for the purpose of vexation or delay or for defeating the ends of justice — Where two witnesses were examined as eyewitnesses and then cross-examined and discharged but about 5 years after recording of their statements as prosecution witnesses, they were allowed to be examined as defence witnesses when they resiled completely from their previous statements as prosecution witnesses, held, their subsequent statements cannot be acted upon — Such defence witnesses are liable to be charged under S. 193 IPC — Criminal Trial — Witnesses — Hostile witness — Appearing as defence witness — Propriety*

The respondents were charged under Sections 302/34 IPC for committing murder. Statements of PW 8, brother of the deceased and PW 9, a friend of the deceased, were recorded under Section 164 CrPC before the Magistrate on 21-9-1989. Thereafter they were examined by the prosecution as eyewitnesses and their statements were recorded before the Sessions Judge on 18-12-1990. They were then cross-examined and discharged. An application under Section 311 CrPC was filed for recalling and re-examining them but the same was rejected by the court on 2-9-1994. However, PW 8 and PW 9 filed an affidavit on 16-8-1994 that the statements made before the Magistrate by them were under pressure and tutored by the police. Thereupon they were recalled by the trial court purportedly in exercise of power under Section 233(3) CrPC and examined as DW 1 and DW 2 on behalf of the accused and their statements were recorded on 17-7-1995 when they completely resiled from their previous statements as PWs. In between 18-12-1990, the day on which their statements were recorded before the Sessions Judge as PWs, and their statements as defence witnesses which were recorded on 17-7-1995 as DWs, no complaint whatsoever was made by DW 1 and DW 2 to any court or to any authority that they gave statements on 18-12-1990 due to coercion, threat or being tutored by the police. The trial court after threadbare discussion of the evidence of the prosecution witnesses including the said two witnesses, convicted the accused under Sections 302/34 IPC. But the High Court relying upon the testimony of DW 1 and DW 2 reversed the judgment of the trial court and acquitted the accused.

Allowing the State's appeal,

Held :

The High Court reversed the order of conviction and recorded the order of acquittal, which is perverse. (Para 11)

Section 233 itself deals with entering upon defence by the accused. The application for recalling and re-examining persons already examined, as provided under Section 311 CrPC, was already rejected. The power to summon any person as a witness or recall and re-examine any person already examined is the discretionary power of the court in case such evidence appears to it to be essential for a just decision of the case. Under Section 233 CrPC the accused can enter upon defence and he can apply for the issue of any process for compelling the attendance of any witness in his defence. The provisions of sub-section (3) of Section 233 cannot be understood as compelling the attendance of any prosecution witness examined, cross-examined and discharged to be juxtaposed as DWs. In the present case PW 8 and PW 9 were juxtaposed as DW 1 and DW 2. This situation is not one what was contemplated by sub-section (3) of Section 233 CrPC. (Para 14)

When such frivolous and vexatious petitions are filed, a judge is not powerless. He should have used his discretionary power and should have refused relief on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. (Para 15)

The order of the High Court is accordingly set aside and the order of the trial court convicting the respondent under Sections 302/34 IPC is restored. (Para 8)

Prima facie, PW 8 and PW 9 in their subsequent affidavits made a false statement which they believed to be false or did not believe to be true. Hence, they are liable for perjury for giving false evidence punishable under Section 193 IPC. Therefore, the Additional Sessions Judge is directed to file a complaint under Section 193 of the Penal Code and initiate proceedings against them and pass necessary orders in accordance with law. (Para 19). *State of M.P.* v. *Badri Yadav*, (2006) 9 SCC 549: (2006) 3 SCC (Cri) 337: AIR 2006 SC 1769: 2006 Cri LJ 2128: (2006) 3 KLT 205.

Bench Strength **2**. Coram: **H.K. Sema** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 31-3-2006]

— **S. 235** *See* Ss. 401, 397, 235, 248 and 255

— **S. 239** *See* Ss. 227, 239 and 245 and 228 and 240

— **S. 240** *See* Ss. 227, 239 and 245 and 228 and 240

See also Ss. 228 and 240 and Ch. III (Ss. 26 to 35)

— **S. 242** *See also* Ss. 391, 311, 386, 231, 242, 244, 233, 243 and 247

[227] — Ss. 242, 309 and 313 — Evidence for prosecution — Deferment of examination of accused under S. 313 — Permissibility — *Where several charge-sheets had been filed against the same accused for similar offences though pertaining to different periods, but only one case reached the stage of examination of the accused under S. 313, held, court has no power to order that recording of statement of accused under S. 313 in that case be deferred till all the other cases against him reach the same stage and then hold trial and record evidence in all the cases simultaneously*

Against the accused-respondent 11 charge-sheets relating to misappro-priation of bank fund for different periods were filed and cases registered. However, when only one such case reached the stage of arguments, the respondent filed an application under Section 309 CrPC requesting the court to defer the recording of his statement under Section 313 CrPC till all the other 10 cases against him reach the stage of the statement of the accused. The trial court dismissed the application and the revisional court dismissed the revision petition filed by the accused. But petition under Section 482 CrPC filed by the accused was allowed by a Single Judge of the High Court by issuing a direction to the trial court to hold trial and record evidence in all the aforesaid cases simultaneously and dispose of the same simultaneously as far as possible. Submission made on behalf of the respondent that he could not be forced to reveal his defence as it would enable the prosecution to cover up the lacunae in other cases which are pending in trial was accepted. This direction has been issued in the purported exercise of power conferred under Section 242 CrPC which according to the Single Judge gives the jurisdiction to a court to defer cross-examination of the material witnesses until all the material witnesses are examined by the prosecution as part of fair trial.

Allowing the State's appeal

Held :

The proviso to sub-section (3) of Section 242 CrPC does not deal with either the clubbing of cases registered against the accused or simultaneous trial of different cases registered against an accused. There is no provision in the Code of Criminal Procedure which enables the court to postpone the examination of the accused under Section 313 CrPC till the completion of the trial in other cases. Merely because certain other charge-sheets have been filed against the same accused for similar offences cannot be a ground to postpone the examination of the accused under Section 313 CrPC. The apprehension of the accused-respondent that if his statement is recorded under Section 313 CrPC he would be required to

divulge his defence and in that event he would be prejudiced in the trial of other cases filed against him is without any basis and foundation. It may be taken note of that as many as 25 witnesses have already been examined and the witnesses have already been cross-examined by the advocate for the accused. It is reasonable to infer that during the course of his cross-examination the accused-respondent must have disclosed his defence. The charges in other cases against the accused may be under the same provisions of the Penal Code and may also be similar, but documentary or oral evidence may be different which ultimately has to be appreciated and evaluated by the court separately in each case. It can be taken judicial note of and kept in mind that completion of trial in other ten charge-sheets may take some more time. The High Court has materially erred in coming to the conclusion that under the provisions of Section 242 CrPC recording of statement of the accused-respondent under Section 313 could be deferred till the trial in other cases involving similar transactions against the accused is completed. (Paras 7 and 8)

Accordingly, the judgment and order of the Single Judge of the High Court is set aside and those of the courts below are restored. The trial court may now proceed in accordance with law. (Para 9). *State of Karnataka* v. *Annegowda*, (2006) 5 SCC 716: (2006) 3 SCC (Cri) 59: AIR 2006 SC 2641.

Bench Strength **2**. Coram: **Ashok Bhan** and *Markandey Katju*, JJ. [Date of decision: 13-7-2006]

— **S. 243** *See* Ss. 391, 311, 386, 231, 242, 244, 233, 243 and 247

— **S. 244** *See* Ss. 391, 311, 386, 231, 242, 244, 233, 243 and 247

— **S. 245** *See* Ss. 197 and 245

See also Ss. 227, 239 and 245 and 228 and 240

— **S. 247** *See* Ss. 391, 311, 386, 231, 242, 244, 233, 243 and 247

— **S. 248** *See* Ss. 401, 397, 235, 248 and 255

— **S. 250** *See* Ss. 482 and 250

— **S. 255** *See* Ss. 401, 397, 235, 248 and 255

[228] — **Ss. 256 and 302 — Permission to continue prosecution after complainant's death — Right of legal heirs of deceased complainant** — *Held, they can file petition under S. 302 CrPC seeking the said permission — If any such permission is sought for by the said heirs, the same has to be considered in its perspective by the court dealing with the matter — Criminal Procedure Code, 1898, S. 495* (Para 7). *Balasaheb K. Thackeray* v. *Venkat*, (2006) 5 SCC 530: (2006) 2 SCC (Cri) 630: (2006) 102 Cut LT 323: (2006) 3 KLT 509.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 5-7-2006]

[229] — **Ss. 257, 199 and 482 — Withdrawal of prosecution for purported defamation of Chief Minister, Ministers and other public officials** — *Appellants agreeing to telecast clarification in respect of allegedly defamatory telecast, and State agreeing to withdraw prosecution — Penal Code, 1860, Ss. 499 and 500. Ramoji Rao* v. *State of A.P.*, (2006) 8 SCC 321: (2006) 3 SCC (Cri) 480: AIR 2006 SC 3384.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 13-10-2006]

— **S. 302** *See* Ss. 256 and 302

— **S. 306** *See* CRIMINAL TRIAL — 'Witnesses' — Accomplice or Approver, (2006) 7 SCC 442

[230] — **S. 308 first proviso — Approver's evidence** — *Approver found to have suppressed some material facts — Even then he cannot be tried with other accused by withdrawing the pardon under the Code — But Court has inherent power to proceed against the approver in such circumstances*

It was submitted that the evidence of the approver should not have been accepted by the Court as it is a tainted evidence. It was argued that there was no satisfactory corroboration of the evidence of the approver and unless there is a corroboration, it should not have been acted upon.

Held :

It is true that the evidence of the approver is always to be viewed with suspicion especially when it is seriously suspected that he is suppressing some material facts. Here the approver's evidence was not fully accepted by the High Court. The High Court was of the view that he had suppressed some material facts. The observation made by the High Court was justified. Despite all, the approver could not be proceeded against and the Public Prosecutor had not taken any step to proceed against the approver. Under such circumstances the Court itself has inherent powers to proceed against the approver in case he is wilfully suppressing material facts or is giving false evidence. When the Court suspected the evidence of the approver, the pardon given to him itself could be withdrawn and he could be tried along with the other accused. But unfortunately the provisions contained in the Criminal Procedure Code do not enable the Court to take such a strong action. (Paras 31 and 33). *Renuka Bai* v. *State of Maharashtra*, (2006) 7 SCC 442: (2006) 3 SCC (Cri) 290: AIR 2006 SC 3056.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *G.P. Mathur*, JJ. [Date of decision: 31-8-2006]

— **S. 309** *See* Ss. 242, 309 and 313

— **S. 311** *See also* Ss. 233(3) and 311

See also Ss. 344, 311 and 39

See also Ss. 391, 311, 386, 231, 242, 244, 233, 243 and 247

[231] — S. 311 — Nature, scope and object of S. 311 — Extensively discussed — *Two parts to S. 311: (i) giving a discretion to the court to examine the witness at any stage, and (ii) the mandatory portion which compels the court to examine a witness if his evidence appears to be "essential to the just decision of the case", analysed and dismissed — When power under either part to be exercised, discussed in detail — Need for court to ensure that best evidence is brought on record — Right of cross-examination of witnesses called under S. 311 — Nature and scope — Evidence Act, 1872, Ss. 165, 137 and 154*

It is a cardinal rule in the law of evidence that the best available evidence should be brought before the court. Sections 60, 64 and 91 of the Evidence Act, 1872 are based on this rule. (Para 28)

Section 311 CrPC, 1973 is manifestly in two parts. Whereas the word used in the first part is "may", the second part uses "shall". In consequence, the first part gives purely discretionary authority to a criminal court and enables it at any stage of an enquiry, trial or proceeding under the Code of Criminal Procedure (*a*) to summon anyone as a witness, or (*b*) to examine any person present in the court, or (*c*) to recall and re-examine any person whose evidence has already been recorded. On the other hand, the second part is mandatory and compels the court to take any of the aforementioned steps if the new evidence appears to it essential to the just decision of the case. This is a supplementary provision enabling, and in certain circumstances imposing on the court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the court to arrive at the truth by all lawful means and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts. (Para 26)

The court is not empowered under the provisions of the Code of Criminal Procedure to compel either the prosecution or the defence to examine any particular witness or witnesses on their side. This must be left to the parties. But in weighing the evidence, the court can take note of the fact that the best available evidence has not been given, and can draw an adverse inference. The court will often have to depend on intercepted allegations made by the parties, or on inconclusive inference from facts elicited in the evidence. In such cases, the court has to act under the second part of Section 311 CrPC. Sometimes the examination of witnesses as directed by the court may result in what is thought to be "filling of loopholes". That is purely a subsidiary factor and cannot be taken into account. Whether the new evidence is essential or not must of course depend on the facts of each case, and has to be determined by the Presiding Judge. (Para 28)

If a witness called by the court gives evidence against the complainant he should be allowed an opportunity to cross-examine. The right to cross-examine a witness who is called by a court arises not under the provisions of Section 311 CrPC, but under the Evidence Act, 1872 which gives a party the right to cross-examine a witness who is not his own witness. Since a witness summoned by the court could not be termed a witness of any particular party, the court should give the right of cross-examination to the complainant. (Para 29)

The object underlying Section 311 CrPC is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The object of Section 311 CrPC is to bring on record evidence not only from the point of view of the accused and the prosecution but also from the point of view of orderly society. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code of Criminal Procedure and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 CrPC the significant expression that occurs is "at any stage of any inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind. (Paras 27 and 29). *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367: 2006 Cri LJ 1694.

Bench Strength **2**. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 8-3-2006]

[**Ed.**: *See also* Shortnotes L and M in *Zahira (1) case*, (2004) 4 SCC 158.]

[232] — S. 311 — Power of court to summon material witness — Grounds on which may be exercised — *Held, the said power can be exercised only with the object of finding out the truth or obtaining proper proof of facts which may lead to a just and correct decision — When such exercise of power is made, plea that power was exercised to fill the lacuna in the prosecution case cannot be accepted unless exercise of power causes serious prejudice to accused which results in miscarriage of justice — In the instant case, respondent-accused raised before trial court a plea of alibi that at the time of the incident he was present in the chamber of the Collector to attend a meeting there — In support of the plea defence examined two witnesses but the Collector was not examined — Public Prosecutor moved application under S. 311 for summoning the Collector and examining him as a witness — Plea taken on behalf of respondent that prosecution should not be allowed to fill in a lacuna by moving the application — Trial court allowed the application in the interest of just and fair decision in view of the fact that defence had kept behind the best available evidence on this point and that moreover it would not cause any prejudice to respondent as alibi was his own defence — Held on facts, examination of the Collector cannot be termed as filling in lacuna — Trial court having taken a decision in the interest of just and fair decision of the case, High Court erred in interfering therewith*

An FIR was lodged in 1996 alleging that at the instigation of the respondent (A-7) and others (A-8 and A-9), accused A-1 to A-6 had assaulted the deceased and caused injuries to some others. After usual investigation charge-sheet was submitted against all the nine accused and the case was committed to the Court of Session. In his statement under Section 313 CrPC which was recorded after closing of the prosecution evidence, the respondent took a plea of alibi and submitted that he is a prominent member of a political party and at the time of the incident he was present in the chamber of the Collector as a meeting had been called there. The respondent examined the Dy. Collector (DW 1) and the Executive and Sector Magistrate (DW 2) in support of his plea of alibi. The Special Public Prosecutor then moved an application purported to be one under Section 311 CrPC praying that the then Collector may be summoned and examined as a witness. The trial court in 2004 allowed the application taking the view that although the matter was very old and was lingering since long but "this alone will not be sufficient to reject an opportunity to the prosecution particularly when the defence has kept behind the best available evidence of the then Collector who had convened the meeting, according to Accused 7, in which he was present". The trial court further observed: "Moreover, it will not cause any prejudice to Accused 7 as alibi is his own defence. He will have an opportunity to cross-examine the witness. Thus in order to find out the truth, evidence of the then Collector is necessary". The respondent filed an application under Sections 397/401/482 CrPC and Article 227 of the Constitution before High Court for setting aside the order passed by the trial court. The High Court held that the respondent had taken a plea of alibi as far back as in the year 1996 when he had moved an application for anticipatory bail and also when he opposed the application moved by the prosecution for giving him on police remand. In the order passed by the Sessions Judge granting bail to the respondent, it was observed that the investigating agency had not considered it appropriate to place the relevant material or to rebut the plea of alibi taken by the respondent. The High Court accordingly held that the grant of the application moved by the Public Prosecutor for summoning the Collector, under Section 311 CrPC would inevitably result in permitting the prosecution to fill in the lacuna in the prosecution case. It was further observed that the respondent had already examined two witnesses and if the trial court was of the opinion that the said evidence was insufficient, a logical conclusion could be drawn for accepting or not accepting the defence version and merely because the defence has chosen not to examine one more witness, who should also have been examined by the defence, that by itself may not be a sufficient reason for invoking the powers under Section 311 CrPC. The application filed by the respondent was accordingly allowed by the order under challenge and the order passed by the trial court was set aside.

Allowing the appeal, setting aside the judgment and order passed by the High Court and restoring the order passed by the Sessions Court,

Held :

In the circumstances of the case, if the Sessions Judge was of the opinion that in order to find out the truth, the evidence of the Collector was necessary, no exception can be taken to the course adopted by him. It was for the Sessions Judge to decide whether for just and fair decision of the case, the evidence of the Collector was necessary or not and he having come to a conclusion that the evidence of the Collector was necessary for just and fair decision of the case, the order passed by him could not have been set aside by the High Court on the ground that it would amount to filling in a lacuna in the prosecution case. In the facts and circumstances of the case, the examination of the

then Collector cannot be termed as filling in lacuna in the prosecution case. The Sessions Judge rightly observed that the evidence of the Collector will not cause any prejudice to the respondent as he had himself pleaded alibi and had led evidence to substantiate the same. Therefore, the High Court clearly erred in setting aside the order passed by the Sessions Judge. (Para 17)

The principle is well settled that the exercise of power under Section 311 CrPC should be resorted to only with the object of finding out the truth or obtaining proper proof of such facts which lead to a just and correct decision of the case, this being the primary duty of a criminal court. Calling a witness or re-examining a witness already examined for the purpose of finding out the truth in order to enable the court to arrive at a just decision of the case cannot be dubbed as "filling in a lacuna in the prosecution case" unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused resulting in miscarriage of justice. (Para 15)

The charge-sheet submitted by the police under Section 173 CrPC after completion of investigation contains the statements of the witnesses as recorded under Section 161 CrPC and in a case exclusively triable by the Court of Session there is a duty enjoined on a Magistrate to furnish to the accused, free of cost, a copy of the police report including a copy of the FIR, statement of the witnesses under Section 161 CrPC and other documents as mentioned in Section 207 CrPC. It is on the basis of the charge-sheet that the Magistrate takes cognizance of the offence under Section 190(1)(*b*) CrPC. Normally, the investigating agency cannot visualise at that stage what will be the nature of defence which an accused will take in his statement under Section 313 CrPC as the said stage comes after the entire prosecution evidence has been recorded. The prosecution is only required to establish its case by leading oral and documentary evidence in support thereof. While leading evidence the prosecution may not be in a position to anticipate or foresee the nature of defence which may be taken by the accused and evidence which he may lead to substantiate the same. Therefore, it is neither expected to lead negative evidence nor is it possible for it to lead such evidence so as to demolish the plea which may possibly be taken by the accused in his defence. This being the normal situation, an application moved by the prosecution for summoning a witness under Section 311 CrPC, after the defence evidence has been recorded, should not be branded as "an attempt by the prosecution to fill in a lacuna". (Para 16). *U.T. of Dadra & Nagar Haveli* v. *Fatehsinh Mohansinh Chauhan*, (2006) 7 SCC 529: (2006) 3 SCC (Cri) 300.

Bench Strength **2**. Coram: **G.P. Mathur** and *A.K. Mathur*, JJ. [Date of decision: 14-8-2006]

Ram Jeet v. State, AIR 1958 All 439: 1958 Cri LJ 716, approved

[233] — **S. 311 — Re-examination of witness — Delay in application for — Effect** — *Application filed by accused to recall the eyewitnesses after a lapse of more than one year and after they were examined, cross-examined and discharged — Held, should not be allowed* (Para 9). *Nisar Khan* v. *State of Uttaranchal*, (2006) 9 SCC 386: (2006) 2 SCC (Cri) 568.

Bench Strength **2**. Coram: **H.K. Sema** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 25-1-2006]

[234] — **S. 311 — Right of cross-examination of witnesses called under S. 311 — Nature and scope** — *Evidence Act, 1872, Ss. 165, 137 and 154*

If a witness called by the court gives evidence against the complainant he should be allowed an opportunity to cross-examine. The right to cross-examine a witness who is called by a court arises not under the provisions of Section 311 CrPC, but under the Evidence Act, 1872 which gives a party the right to cross-examine a witness who is not his own witness. Since a witness summoned by the court could not be termed a witness of any particular party, the court should give the right of cross-examination to the complainant. (Para 29). *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367: (2006) 2 KLT 350: 2006 Cri LJ 1694.

Bench Strength **2**. Coram: [Date of decision: 8-3-2006]

— Ss. 311 and 391 — Rule of best evidence — Cardinality of — Role of court in ensuring that such evidence is brought on record *See* EVIDENCE ACT, 1872, Ss. 165, 3, 5, 60, 64 and 91, (2006) 3 SCC 374

— S. 313 *See* Ss. 242, 309 and 313

See also PENAL CODE, 1860, Ss. 96, 97 and 100 to 103, (2006) 11 SCC 304, Ss. 405 and 409, (2006) 5 SCC 381

See also PREVENTION OF CORRUPTION ACT, 1947, Ss. 4 and 5(2) & 5(1)(d), (2006) 1 SCC 407

[235] — **Ss. 319, 386 and 482 — Power to proceed against any person other than the accused — Scope** — *It is discretionary power of trial court which should be exercised judicially, having regard to the facts and circumstances of the case, on the basis of evidence adduced before it and not on the basis of material available in charge-sheet or case diary — Power can be exercised suo motu — Person named in FIR as having participated in the crime but not charge-sheeted, can also be added to face the trial — In complaint filed by deceased's father (respondent),*

it was alleged that deceased's husband, her brother-in-law and father-in-law (appellant) had poured kerosene on deceased and set her on fire — During investigation, appellant took the stand that at the time of the incident he was serving at a school — Appellant having not been charge-sheeted, complainant moved application under S. 319 during course of trial for proceeding against appellant — Application rejected by trial court on the basis that complainant was an interested witness and sufficient ground did not exist to proceed against appellant — Trial court convicted others under S. 304-B — Held, rejection of application under S. 319 was not based on relevant ground — Hence High Court was justified in directing trial court to proceed against appellant by summoning him

The trial court has undoubted jurisdiction under Section 319 CrPC to add any person not being the accused before it to face the trial along with the other accused persons, if the court is satisfied at any stage of the proceeding on the evidence adduced that the persons who have not been arrayed as accused should face the trial. Power under Section 319 of the Code can be exercised by the court suo motu or on an application by someone including the accused already before it. If it is satisfied that any person other than the accused has committed an offence he is to be tried together with the accused. Such person, even though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added to face the trial. (Paras 10 and 11)

The word "evidence" in Section 319 CrPC contemplates the evidence of witnesses given in court. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge-sheet or the case diary do not constitute evidence. Of course, an accused who has been discharged stands on a different footing. (Paras 11 and 10)

Under sub-section (4)(1)(*b*) of Section 319 CrPC, it is specifically made clear that it will be presumed that newly added person had been an accused person when the court took cognizance of the offence upon which the inquiry or trial was commenced. That would show that by virtue of sub-section (4)(1)(*b*) a legal fiction is created that cognizance would be presumed to have been taken so far as newly added accused is concerned. (Para 11)

The power is discretionary and such discretion must be exercised judicially having regard to the facts and circumstances of the case. Undisputedly, it is an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. (Para 11)

In the present case, the trial court rejected the application only on the ground that the complainant was an interested witness and, therefore, sufficient ground did not exist to take action against the accused persons. Though the power is extraordinary and is used only if compelling reasons exist, the factor which weighed with the trial court does not appear to be relevant and, therefore, the High Court has rightly interfered in the matter. (Para 12). *Lok Ram* v. *Nihal Singh*, (2006) 10 SCC 192: (2006) 3 SCC (Cri) 532: AIR 2006 SC 1892: 2006 Cri LJ 2366.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 10-4-2006]

[236] — Ss. 320 and 354 — Non-compoundable offence — Compromise in — Relevance of — *Held, though compromise cannot be recorded in such a case, but the effect of compromise can be taken into consideration while awarding the sentence — Appellants convicted under S. 326 IPC and sentenced to two years' RI — Compromise petition filed — Appellants in custody for about five months — Held, ends of justice would be met if sentence reduced to period already undergone — Penal Code, 1860, S. 326* (Para 4). *Jetha Ram* v. *State of Rajasthan*, (2006) 9 SCC 255: (2006) 2 SCC (Cri) 561.

Bench Strength **2**. Coram: *B.N. Agrawal* and *S.H. Kapadia*, JJ. [Date of decision: 29-7-2005]

— S. 321 *See* PRACTICE AND PROCEDURE — 'Finality of judgment/order', (2006) 10 SCC 473

[237] — S. 321 — Withdrawal of cases — Duty of public prosecutor under S. 321 — *Held, Public Prosecutor cannot act like a postbox or act on dictates of the State Government — He has to act objectively as befits an officer of the court — Furthermore, court is not bound by opinion of Public Prosecutor and is free to assess whether a prima facie case is made out or not — On facts, prima facie case having been made out against the accused, application of Public Prosecutor and order of State Government for withdrawal of cases, quashed*

The Public Prosecutor has to shoulder a greater responsibility for withdrawal of cases under Section 321 CrPC. The Public Prosecutor cannot act like a postbox or act on the dictates of the State Government. He has to act objectively as he is also an officer of the court. At the same time the court is also not bound by that. The courts are also free to assess whether a prima face case is made out or not. The court, if satisfied, can also reject the prayer. (Para 32)

In the present case there is a prima facie case to proceed against the accused persons under Section 4(*b*) of the Act and the other provisions of the Explosives or Arms Acts. Therefore, the sanction granted by the Government and application moved by the Public Prosecutor for withdrawal of the cases cannot be sustained. Hence the order of the State Government withdrawing the cases against the accused persons is quashed, likewise direction to the Public Prosecutor for withdrawing the cases from the court. (Para 32). *S.K. Shukla* v. *State of U.P.*, (2006) 1 SCC 314: (2006) 1 SCC (Cri) 366: AIR 2006 SC 413: 2006 Cri LJ 148.

Bench Strength **2**. Coram: *B.N. Agrawal* and **A.K. Mathur**, JJ. [Date of decision: 10-11-2005]

Sheonandan Paswan v. State of Bihar, (1983) 1 SCC 438: 1983 SCC (Cri) 224; Rajender Kumar Jain v. State, (1980) 3 SCC 435: 1980 SCC (Cri) 757; R.M. Tewari v. State (NCT of Delhi), (1996) 2 SCC 610: 1996 SCC (Cri) 361; Ayyub v. State of U.P., (2002) 3 SCC 510: 2002 SCC (Cri) 673, followed

[238] — S. 321 — Withdrawal of prosecution — Discretion as to — Who can exercise — Relevant factors for withdrawal — *Held, discretion to withdraw from prosecution is that of Public Prosecutor and none else — Public Prosecutor cannot surrender that discretion to anyone — He may withdraw from prosecution not merely on ground of paucity of evidence but on other relevant factors as well in order to further the broad ends of justice, public order, peace and tranquillity* (Para 14). *Ghanshyam* v. *State of M.P.*, (2006) 10 SCC 473: (2006) 3 SCC (Cri) 602.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

— Ss. 344, 311 and 391 *See* RULE OF LAW, (2006) 3 SCC 374

— S. 354 *See* Ss. 320 and 354

— S. 357 *See* CONSTITUTION OF INDIA — 'Article 21' — Custodial death/violence, Arts. 21, 32, 226 and 300, (2006) 3 SCC 178

[239] — S. 357 — Award of compensation to victim of offence (rape in this case) to be paid by State — Direction by trial court in respect of — Confirmation of, by High Court in appeal against conviction — Propriety of — *Held, it was not open to State to challenge the said part of High Court's order against it in the appeal filed by accused — Hence, the said challenge rejected as meritless — Penal Code, 1860 — Sections 375 and 376 — Rape — Compensation to rape victim, S. 376(2)(f) — Crimes against women and children — Compensation to rape victim* (Para 16). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

— S. 360 *See* Ss. 362 and 360

See also PROBATION OF OFFENDERS — 'Probation of Offenders Act, 1958', S. 4, (2006) 6 SCC 159

— Grant of probation for offence(s) committed under S. 13, Prevention of Corruption Act, 1988 — Impermissibility *See* PREVENTION OF CORRUPTION ACT, 1988, S. 13, (2006) 11 SCC 473

— Ss. 360 & 361 *See* PROBATION OF OFFENDERS — 'Probation of Offenders Act, 1958', S. 4, (2006) 6 SCC 159; (2006) 5 SCC 396

— S. 362 *See also* Ss. 482, 190(1)(b), 204, 173, 169 and 362

[240] — Ss. 362 and 360 — Modification of judgment — Permissibility — *Prayer to modify the judgment after conviction by directing the appellant to be released on probation under S. 4 of the Probation of Offenders Act, 1958 or in the alternative under S. 360 CrPC — Rejection of, by High Court, held, was justified in the absence of any provision for modification of the judgment — But considering the peculiar circumstances, High Court directed to consider appellant's application under the Probation Act or S. 360 CrPC, as the case may be — Probation of Offenders — Probation of Offenders Act, 1958, S. 4* (Para 9). *Chhanni* v. *State of U.P.*, (2006) 5 SCC 396: (2006) 2 SCC (Cri) 466.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 6-7-2006]

— S. 374 *See also* Ss. 383, 374 and 386

See also Ss. 386 and 374

See also Ss. 386(b)(ii) and 374

[241] — Ss. 374, 386 and 401 — Appeal before High Court against conviction — Dismissal without examining merits — Propriety — *Appeal dismissed only on ground that criminal revision petition filed by informant had been dismissed and the revision and the appeal related to the same judgment — Case of the appellants not examined independently on merits — Held, merely because revision petition filed by informant was dismissed, that could not have been a ground for not discussing merits of the appeal filed by appellants — Revision petition may have been without merits but that would not make the appeal meritless — Matter sent back to High Court for fresh consideration on merits. Kalu Ram* v. *State of Delhi*, (2006) 5 SCC 674: (2006) 3 SCC (Cri) 48: AIR 2006 SC 2460: 2006 Cri LJ 3284.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 15-6-2006]

— Ss. 374 and 386 *See* CRIMINAL TRIAL — 'Acquittal', (2006) 6 SCC 9, 'Circumstantial evidence' — Generally, (2006) 10 SCC 172

See also PREVENTION OF CORRUPTION ACT, 1947, S. 5(2) r/w S. 5(1)(d), (2006) 1 SCC 407

[242] — Ss. 374 and 386 — Appeal before High Court against conviction — High Court reversing the order of conviction — Propriety — *Testimony of*

prosecution witnesses unimpeached and corroborated by medical evidence and post-mortem report — Motive for committing crime established — High Court recording acquittal on two grounds: (i) though the incident was alleged to have occurred on a pucca road at 5.15 p.m., no outsider or pedestrian or resident of the vicinity had been named in FIR or statement of witnesses but only PW 2 was examined as independent witness; and (ii) there was no necessity for PW 1 (father of the deceased) to go to Bareilly to fetch medicines for his younger son, when the deceased was going there to give evidence — Held, findings recorded by High Court are contrary to evidence on record and based on surmises and conjectures — Prosecution evidence has to be weighed and not counted — Besides, naming of witnesses is within the domain of the prosecution — Moreover, High Court has doubted the presence of witnesses without assigning any reasons — Hence order of acquittal recorded by High Court set aside and that of trial court restored — Evidence Act, 1872, S. 134 — Criminal Trial — Appreciation of evidence — Appellate court's approach (Paras 10, 11, 12, 14, 15 and 18). *State of U.P.* v. *Ganga Ram*, (2005) 13 SCC 239: (2006) 2 SCC (Cri) 154: AIR 2006 SC 20: (2006) 1 All LJ 298: 2005 Cri LJ 4643.

Bench Strength **2**. Coram: **H.K. Sema** and *P.P. Naolekar*, JJ. [Date of decision: 25-10-2005]

Mithu Singh v. State of Punjab, (2001) 4 SCC 193: 2001 SCC (Cri) 668, considered

State of Rajasthan v. Kishan Singh, (2002) 10 SCC 160: 2004 SCC (Cri) 456, distinguished

— Ss. 374 and 386 — Expeditious disposal of appeal — Direction by Supreme Court for *See* CONSTITUTION OF INDIA — 'Article 136' — Exercise of power — Relief, Art. 136, (2006) 9 SCC 234

— S. 374(2) *See also* Ss. 482, 374(2), 386 and 397

[243] — Ss. 374(2) and 386 — Appeal to High Court against conviction — *Plea of self-defence main basis of the memorandum of appeal — High Court erred in not considering the said plea which went to the root of the matter* (Para 13). *Krishnan* v. *State of T.N.*, (2006) 11 SCC 304: (2007) 1 SCC (Cri) 437: AIR 2006 SC 3037: 2006 Cri LJ 3907.

Bench Strength **2**. Coram: *G.P. Mathur* and **R.V. Raveendran**, JJ. [Date of decision: 14-8-2006]

— Ss. 374(2) and 386 — Sentencing — Applicability of statutory standard for, on appellate court as applicable to trial court *See* PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Sentence, Ss. 376(1) & (2) provisos, (2006) 6 SCC 1

[244] — S. 377(3) — Appeal by State for enhancement of sentence — Right of accused in — Scope — *Held, in said appeal, the accused is entitled to be heard for his acquittal* (Para 3). *Arun Balkrishna Nirmal* v. *State of Maharashtra*, (2006) 6 SCC 429: (2006) 3 SCC (Cri) 175.

Bench Strength **2**. Coram: *B.N. Srikrishna* and *Tarun Chatterjee*, JJ. [Date of decision: 11-5-2006]

— S. 378 *See* Ss. 397, 401 and 378

[245] — S. 378 — Appeal against acquittal — Power of appellate court to interfere — *Where two views possible, held, appellate court should not interfere with finding of acquittal recorded by court below* (Para 54). *M.S. Narayana Menon* v. *State of Kerala*, (2006) 6 SCC 39: (2006) 3 SCC (Cri) 30: (2006) 3 KLT 404: (2006) 5 Mah LJ 676: (2006) 4 MPLJ 97.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 4-7-2006]

[246] — S. 378 — Leave to file appeal against acquittal — Refusal of, by High Court without giving reasons — Propriety — *Trial court acquitting accused persons without appraising the entire evidence — Held, High Court should have reappreciated the entire evidence and not refused to grant leave to file appeal against acquittal without setting forth its reasons — Penal Code, 1860, Ss. 148 and 302 r/w S. 149 — Scheduled Castes and Tribes — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, S. 3(2)*

The trial court was required to carefully appraise the entire evidence and then come to a conclusion. If the trial court was at lapse in this regard the High Court was obliged to undertake such an exercise by entertaining the appeal. The trial court on the facts of this case did not perform its duties, as was enjoined on it by law. The High Court ought to have in such circumstances granted leave and thereafter as a first court of appeal, reappreciated the entire evidence on the record independently and returned its findings objectively as regards guilt or otherwise of the accused. It has failed to do so. The High Court has not given any reasons for refusing to grant leave to file appeal against acquittal. The manner in which the appeal against acquittal has been dealt with by the High Court leaves much to be desired. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable. (Para 6). *Suga Ram* v. *State of Rajasthan*, (2006) 8 SCC 641: (2007) 1 SCC (Cri) 18: AIR 2006 SC 3258: 2006 Cri LJ 4643.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 18-9-2006]

— Ss. 378 and 386 *See* PENAL CODE, 1860 — 'Section 302 — Murder Trial' — Acquittal confirmed, Ss. 302, 307 and

34, (2006) 10 SCC 494; 'Sections 375 and 376 — Rape' — Appreciation of evidence, Ss. 376(2)(e) and 375, (2005) 13 SCC 398

[247] — Ss. 378 and 386 — Appeal against acquittal — *Reappreciation of evidence and interference with the findings of acquittal — When called for — Penal Code, 1860, Ss. 326, 323 & 324 r/w S. 149*

While deciding an appeal against acquittal, the power of the appellate court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further, if it decides to interfere, it should assign reasons for differing with the decision of the trial court. (Para 8)

In the instant case the High Court had not interfered in the matter in a routine manner merely because a different view was possible. The High Court had interfered rightly, because the trial court unreasonably disbelieved the evidence of six eyewitnesses on insufficient grounds, and had also assigned reasons for interfering with acquittal. Hence, judgment of the High Court was well justified. (Para 16). *Kallu* v. *State of M.P.*, (2006) 10 SCC 313: (2006) 3 SCC (Cri) 546: AIR 2006 SC 831: 2006 Cri LJ 799.

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 4-1-2006]

[248] — Ss. 378 and 386 — Appeal against acquittal — Powers of appellate court — Scope — Reiterated — *On facts held, High Court erred in setting aside the order of acquittal by making observations in abstract and general manner without even discussing the factors which weighed with the trial court in recording acquittal*

There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. However, judgment of acquittal can be interfered with only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. (Para 5)

If two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (Para 5)

On facts held, the High Court's judgment is clearly indefensible. By making observations in an abstract and general manner it concluded that the discrepancies were immaterial, without even discussing the factors which weighed with the trial court to hold that the prosecution evidence was not cogent and credible. Therefore, the order of acquittal should not have been set aside in the manner as done. (Para 6). *V.N. Ratheesh* v. *State of Kerala*, (2006) 10 SCC 617: (2007) 1 SCC (Cri) 50: AIR 2006 SC 2667: (2006) 3 KLT 383: 2006 Cri LJ 3634.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 6-7-2006]

[249] — Ss. 378 and 386 — Appeal against acquittal — Power of High Court while dealing with — Scope — *Factors to be borne in mind — Held, High Court can review and consider entire evidence and come to its own conclusions by either accepting the evidence rejected by the trial court or rejecting the evidence accepted by the trial court — But if it departs from conclusions reached by trial court, it should state reasons for not accepting the same — While dealing with appeal against acquittal, High Court should bear in mind (i) that the presumption of innocence in favour of accused is fortified by findings of trial court, (ii) that the accused is entitled to benefit of any doubt, and (iii) that the trial court had advantage of examining the demeanour of witnesses*

The power of the High Court in an appeal from acquittal is no different from its power in an appeal from conviction. It can review and consider the entire evidence and come to its own conclusions by either accepting the evidence rejected by the trial court or rejecting the evidence accepted by the trial court. However, if the High Court decided to depart from the conclusions reached by the trial court, it should pay due attention to the grounds on which acquittal was based and state the reasons as to why it finds the conclusions leading to the acquittal, unacceptable. It should also bear in mind that (*i*) the presumption of innocence in favour of the accused is fortified by the

findings of the trial court; (*ii*) the accused is entitled to benefit of any doubt; and (*iii*) the trial court had the advantage of examining the demeanour of the witnesses. The crux of the matter, however, is whether the High Court is able to give clear reasons to dispel the doubt raised, and reject the reasons given by the trial court. (Para 15). *Pulicherla Nagaraju* v. *State of A.P.*, (2006) 11 SCC 444: (2007) 1 SCC (Cri) 500: AIR 2006 SC 3010: 2006 Cri LJ 3899.

Bench Strength **2**. Coram: *G.P. Mathur* and **R.V. Raveendran**, JJ. [Date of decision: 18-8-2006]

[250] — Ss. 378 and 386 — Appeal against acquittal — Powers of High Court — Scope — Reiterated — *On facts held, view of the trial court having regard to the facts and circumstances of the case was a possible view, which should not have been interfered with by the High Court*

The High Court does not ordinarily set aside a judgment of acquittal in a case where two views are possible, although, the view of the appellate court is a more probable one. However, while dealing with a judgment of acquittal, it is free to consider the entire evidence on record so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. It is also entitled to consider as to whether in arriving at a finding of fact, the trial Judge has failed to take into consideration admissible evidence and has taken into consideration evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of the scrutiny by the appellate court. (Paras 9 to 13)

On 12-4-1992, at about 9 p.m., while the deceased *R* and his wife *C* were irrigating their sugarcane field in the moonlit night and a lantern was hanging nearby, the appellants armed variously are alleged to have entered their field. They stopped running of motor resulting in exchange of abuses. Hearing the noise *CR* (PW 2), *S* (PW 3), *V* and *SW* arrived at the place of occurrence with torches. *B* allegedly fired from his gun at *R*, whereas A-5 fired at his wife. A-6 was said to have fired at their son *RV* (PW 1). Other accused were also alleged to have fired from their respective weapons. On receiving injuries *R* and *C* ran a few paces but fell down dead at some distance. PW 1 thereafter went to a police station which was 28 km away from the place of occurrence in a tractor, along with PW 2 and *V* and lodged FIR at about 0025 hours on 13-4-1992, which was dispatched to the court at about 6.25 a.m. on the same day, but which reached the court only on 18-4-1992. PW 7, SI of the police station, reached the place of occurrence and found the dead bodies lying in the field. He made an attempt to arrest the accused at night.

In the meantime, PW 1 who had received a gun shot injury was examined by the doctor (PW 4) at about 4 a.m. on 13-4-1992, and was advised to take an x-ray of the injured part. However, x-ray was taken only on 18-4-1992 by PW 6, Senior Radiologist, who found an opaque substance, which according to him was a metallic pellet in the upper part of his right arm.

PW 1 allegedly came back to the village at 6 a.m. Inquest of the dead bodies started at 8 a.m. and concluded at 9.30 a.m. whereafter dead bodies were taken for autopsy at about 12/12.30 p.m. The post-mortem was done only on 14-4-1992 by PW 9 because no autopsy surgeon was available on previous day.

The trial court acquitted the appellants, inter alia, holding that: (*i*) FIR was ante-timed and antedated; (*ii*) exact time of occurrence was not proved; (*iii*) injuries on the person of PW 1 were doubtful; (*iv*) evidence of PW 2 and PW 3, who were chance witnesses was unreliable; and (*v*) medical evidence did not support the prosecution case.

On an appeal preferred thereagainst by the State, a Division Bench of the High Court reversed the same. Hence the present appeal by the accused-appellants.. *Budh Singh* v. *State of U.P.*, (2006) 9 SCC 731: (2006) 3 SCC (Cri) 377: AIR 2006 SC 2500: 2006 Cri LJ 2886.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 12-5-2006]

[251] — Ss. 378 and 386 — Appeal against acquittal — Scope of High Court's jurisdiction — *Held, where two views are possible, High Court should not interfere only because it feels that sitting as a Sessions Court it would have preferred a contrary view — It should consider every reason given by the Sessions Court and then dislodge them — Further held, but appellate court is not precluded from reappraising the evidence in cases where it feels that Sessions Court had erred in its approach or appreciation of law and evidence, or when the court has missed or not read the evidence placed before it — High Court can reverse the order of Sessions Court when it feels and finds that there is direct evidence on record to prove to the contrary, otherwise the whole purpose of providing appeal against the judgment of the Sessions Court would be defeated — On facts, High Court rightly reversed order of acquittal*

One *R* (PW 15), father of the complainant *S* (PW 1), was shot at while reading a telegram, at the main door of his residence. *S* was standing behind him at that time. Brother of the complainant, PW 2, ran after the four miscreants. *R* (deceased) also ran after the miscreants and was able to catch hold of one of them. The miscreant in his attempt to flee, fired at *R* which hit *R* in the abdomen. The miscreant was thereafter

overpowered by the complainant and others while other miscreants escaped from the spot, but various witnesses managed to see their faces in the streetlight. A country-made pistol was recovered from the apprehended miscreant. *R* succumbed to his injuries. The accused-appellant was charged under Sections 302, 307/34 IPC and Section 27 of the Arms Act. The Sessions Judge acquitted the appellant as it found statements of PW 1, PW 2 and other eyewitnesses unreliable, inter alia, on following grounds: (*1*) It is unnatural that PW 1 would scribe the FIR in his own hand inside his house when his injured father was lying at the door during that period; (*2*) When 32-40 persons had assembled at the house of PW 1, he could not name even 2-4 persons; (*3*) Only one out of the four miscreants was apprehended but none tried to go after the remaining miscreants; (*4*) PW 1's clothes were not found smeared with blood although his father PW 15 had bleeding injuries; (*5*) PW 2 was disbelieved because he was unable to see the person who handed over the telegram to his father but was able to see the miscreants who were about 15 paces away and who were facing north-west, whereas PW 2 was coming from west and facing east; (*6*) PW 3 was disbelieved because he could not give the direction of the shop at which he was standing during occurrence; (*7*) Despite the fact that other miscreants were armed, no attempt was made by them to free the captured miscreants even though he was the brother of the two miscreants; (*8*) Persons responsible for hatching the conspiracy were not proceeded against though evidence was collected against them; (*9*) PW 1 and his family members were not strangers to the crime; (*10*) PW 3 was a chance witness and was closely associated with PW 1; and (*11*) Prosecution had not examined independent witnesses even when their presence was admitted.

The High Court in appeal against acquittal, on reappreciation of evidence convicted the appellant under Section 302 and Sections 307/34 IPC and Section 27 of the Arms Act and sentenced him to life imprisonment, five years RI and one year RI respectively. Hence the present appeal by the accused-appellant.

Dismissing the appeals,

Held :

The High Court had reached a conclusion contrary to that of the Sessions Court on reappreciation of evidence. It had appreciated the statement of the victim, PW 15 which the Sessions Court failed to do. The High Court had placed reliance on the fact of immediate lodging of FIR and the confirmation of the story narrated therein by ocular statement of the witnesses examined by the prosecution. The High Court had rightly taken a different view on the statement of PW 1 which has been ignored by the trial court on the basis of the insignificant aspects. Testimony of PW 15 cannot be discarded as he is the victim and the fact that he was shot at cannot be denied. A person who is shot at from a near distance would be in a position to look at the face of the assailants in the availability of sufficient light. There does not appear to be any motive or reason for PW 15 to falsely implicate the appellant in such a serious crime. The statement of PW 1 could not have been discarded whose presence in the whole of the incident was natural as the incident commenced at his house and culminated in a nearby place when he along with other persons including the deceased *R*, chased the miscreants and apprehended the accused-appellant with a gun in his hand. There was sufficient time and opportunity for him to see that the appellant who was involved in commission of the crime. Further, fact that PW 1 could not remember the faces of persons among the people who had gathered outside his house at the time of the incident, would not make his testimony unreliable. One has to look at the situation in which crime was committed and also the mental condition of the witness who is the son of the injured person who had witnessed the heinous crime. In the heat of the moment it is quite natural that his attention would be more towards the assailants and his injured father and also to catch hold of the assailants who were running away from the spot rather than to find out who were the persons present at the spot and in that course if he could not remember the faces of the persons present, it cannot be a ground for discarding his statement whose presence at the spot was most natural. Sessions court had discarded his statement on the ground that his clothes were not found smeared with bloodstains. The evidence on record shows that he had simply helped his father after he received the injuries and thereafter he immediately left the spot and particularly so, when there is nothing on record to disbelieve the statement of his father *R* (PW 15). There is no reason to disbelieve the version of PW 2 whose presence at the spot cannot be denied. His testimony does not suffer from any material incongruity or falsehood. Though PW 3 was found not to be a wholly truthful witness but so far as his statement of identifying the assailant is concerned, it does inspire confidence. The High Court's acceptance of part of the evidence and discarding the unreliable part is in accordance with law and is in tune with the established practice followed by the courts while appreciating the evidence of the witnesses. The Sessions Court committed an error in discarding his evidence wholly. The statement of PW 3 is a corroborative piece of evidence corroborating the statement of witnesses PW 1 and PW 2. The High Court has

rightly found that the testimony of the doctor who first examined the deceased, is reliable regarding the nature of injuries and supported by the statement of ballistics expert (PW 21) that a gun was used in the incident. Moreover, FIR was promptly lodged and story narrated therein was confirmed by the PWs. There is no merit in the argument that appellant had been falsely implicated as he was caught near the place of incident with the country-made pistol. Deposition of DW 5 that accused-appellant had gone there only for the purpose of purchasing buffalo not inspiring confidence as only Rs 120.13 was recovered from him and any person intending to purchase buffalo would not come with such a meagre amount. Besides such defence was put forth not at the outset when he was examined for the first time under Section 313 CrPC. The stand was only taken when he was examined for the second time after examination of the court witnesses. (Paras 8 and 10)

On an overall consideration and on appreciation of the evidence on record placed by the prosecution, the conclusion is that the High Court has not committed any error or illegality in reversing the order of acquittal passed by the Sessions Court. (Para 11). *Haji Khan* v. *State of U.P.*, (2005) 13 SCC 353: (2006) 2 SCC (Cri) 336.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.P. Naolekar**, JJ. [Date of decision: 23-11-2005]

[252] — Ss. 378 and 386 — Appeal against acquittal — Sustainability of acquittal — *Murder trial — Accused convicted under Ss. 302/34 IPC by trial court — High Court reversing the well-reasoned and justified judgment of trial court — Findings of High Court contrary to evidence on record, perverse, far-fetched and imaginary — Held, High Court erred in rejecting the findings of trial court — Acquittal recorded by High Court set aside and conviction recorded by trial court restored — Penal Code, 1860 — Ss. 302/34* (Paras 16 and 17). *Jagdish Narain* v. *Krishna*, (2005) 13 SCC 255: (2006) 2 SCC (Cri) 168: AIR 2005 SC 4341: 2005 All LJ 3639: 2005 Cri LJ 4513.

Bench Strength **2**. Coram: **H.K. Sema** and *G.P. Mathur*, JJ. [Date of decision: 4-10-2005]

[253] — Ss. 378 and 386 — Appeal against acquittal — Where two views reasonably possible from the very same evidence, prosecution cannot be said to have proved its case beyond reasonable doubt — *Trial court, finding that the accused succeeded in proving his case by preponderance of probabilities, acquitting the accused — High Court without holding that the view taken by trial court was perverse or erroneous, erred in reappreciating the very same evidence and coming to a contrary conclusion* (Para 17). *T. Subramanian* v. *State of T.N.*, (2006) 1 SCC 401: (2006) 1 SCC (Cri) 401: AIR 2006 SC 836: 2006 Cri LJ 804.

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 4-1-2006]

[254] — Ss. 378 and 386 — Appeal before High Court against acquittal recorded by trial court — *High Court should not ordinarily reverse the judgment of acquittal when two views are possible — When trial court's judgment cannot be said to be perverse or not possible to be taken, held on facts, High Court erred in reversing trial court's judgment and convicting the accused* (Para 17). *Samghaji Hariba Patil* v. *State of Karnataka*, (2006) 10 SCC 494: (2007) 1 SCC (Cri) 113.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 19-10-2006]

[255] — Ss. 378 and 386 — It is well settled that if two views are possible, the appellate court should not interfere with the judgment of acquittal passed by the court below (Para 26). *Umrao* v. *State of Haryana*, (2006) 10 SCC 136: (2006) 3 SCC (Cri) 482: AIR 2006 SC 2152: 2006 Cri LJ 2798.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 12-5-2006]

[256] — Ss. 378 and 386 — Reversal of acquittal by High Court, held on facts, not justified — *Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, S. 2(a) — Evidence Act, 1872, S. 60* (Paras 10 to 12 and 14 to 19). *Pratap Singh* v. *State of M.P.*, (2005) 13 SCC 624: (2006) 2 SCC (Cri) 284: AIR 2006 SC 514: 2006 Cri LJ 310.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 23-11-2005]

[257] — Ss. 383, 374 and 386 — Appeal received from jail — Practice to be followed by appellate court in case of — *Held, appellate court may appoint an amicus curiae or may send the matter to the Legal Aid Committee for nominating a counsel to assist the Court and represent the case of the accused — In the instant case, direction made to High Court to hear the appeal afresh after following the said practice* (Paras 4 and 5). *Satbir* v. *State of Haryana*, (2006) 9 SCC 234: (2006) 2 SCC (Cri) 553.

Bench Strength **2**. Coram: *B.P. Singh* and *S.H. Kapadia*, JJ. [Date of decision: 5-9-2005]

[258] — Ss. 385(2) and 386(b) — Reconstruction of records — Necessity of — *Acquittal by High Court as lower court records not available to it, without taking steps for reconstruction of records, in spite of appellant State's willingness to supply relevant records — Impropriety — Held, High Court was not right in acquitting accused on this ground — Civil Procedure Code, 1908, Or. 20 R. 20, Or. 13 R. 10, Or.*

41 R. 24 — Reconstruction of records — Necessity of — Practice and Procedure — Record of the case — Reconstruction of — Necessity of. State of U.P. v. *Raj Narain Pandey*, (2005) 13 SCC 444: (2006) 2 SCC (Cri) 343.

Bench Strength **2**. Coram: *B.N. Agrawal* and *P.K. Balasubramanyan*, JJ. [Date of decision: 7-2-2005]

[**Ed.**: *See also* (2004) 4 SCC 6]

— S. 386 *See also* Ss. 374 and 386

See also Ss. 374, 386 and 401

See also Ss. 374(2) and 386

See also Ss. 378 and 386

See also Ss. 391, 311, 386, 231, 242, 244, 233, 243 and 247

See also Ss. 464, 386, 401 and 399

See also Ss. 482, 374(2), 386 and 397

[259] — Ss. 386 and 374 — Appeal against conviction — Alteration of conviction and reduction of sentence without any discussion of evidence — Propriety of — *Held, was not proper — Matter remitted to appellate court for disposal afresh — Appeal to be placed before a Judge other than the one who passed the impugned judgment — Penal Code, 1860 — Ss. 376/109 and 354* (Paras 3 to 5). *State of U.P.* v. *Mulaim*, (2005) 13 SCC 453: (2006) 2 SCC (Cri) 260.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *G.P. Mathur*, JJ. [Date of decision: 11-7-2005]

— S. 386(b) *See* Ss. 385(2) and 386(b)

[260] — Ss. 386(b)(ii) and 374 — Power of appellate court in appeal against conviction — Scope — *Held, extent of offence or the finding as to offence committed, can be changed — Offence under Prevention of Corruption Act — While affirming conviction and sentence, High Court holding that the value of unaccounted-for assets was Rs 4,13,802.16 and not Rs 3,05,985.39 as determined by trial court — Considering the alteration of the said finding, held, High Court did not exceed its jurisdiction in exercising power under S. 386 — Prevention of Corruption Act, 1947, S. 5(1)(e) r/w S. 5(2) — Prevention of Corruption Act, 1988, S. 13(1)(e) r/w S. 13(2)*

The Special Judge convicted and sentenced the appellant under Section 5(1)(*e*) read with Section 5(2) of the Prevention of Corruption Act, 1947. In an appeal by the accused against the said conviction and sentence, the High Court neither modified the finding of guilt under Section 5(1)(*e*) nor the sentence under Section 5(2). All that it has done is while affirming the finding of guilt recorded by the Special Judge in regard to the disproportionate wealth, to recalculate the exact amount of disproportionate wealth with reference to the evidence, which is permissible under Section 386(*b*)(*ii*) which provides that the appellate court may, in an appeal from a conviction, alter the finding, maintaining the sentence. If an appellate court may alter the finding of guilt of the accused from one section to another, while maintaining the sentence, there is no reason why the extent of the offence should not be changed in an appeal against conviction. Therefore, it could not be said that the High Court exceeded its jurisdiction in exercising the power of appeal under Section 386 CrPC. (Para 33). *R. Janakiraman* v. *State*, (2006) 1 SCC 697: (2006) 1 SCC (Cri) 442: AIR 2006 SC 1106.

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 4-1-2006]

State of A.P. v. Thadi Narayana, (1962) 2 SCR 904: AIR 1962 SC 240: (1962) 1 Cri LJ 207, considered and distinguished on facts

— S. 389 *See also* Ss. 437, 439, 438 and 389

See also Ss. 439, 437 and 389

See also INTOXICANTS — 'Narcotic Drugs and Psychotropic Substances Act, 1985', S. 37, (2005) 13 SCC 144

See also SUPREME COURT RULES, 1966, Or. 21 R. 13-A, (2006) 5 SCC 752

[261] — S. 389 — Bail pending appeal — When to be granted — *Appeal against conviction under Ss. 304-B and 498-A IPC — No chance of said appeal being heard in the near future — Accused already suffered sentence of 3 years and 6 months — In these circumstances, held, accused should be released on bail on his furnishing bail bond and surety to the satisfaction of the trial court — Penal Code, 1860, Ss. 304-B and 498-A* (Para 3). *Salim Javed* v. *State of Rajasthan*, (2006) 9 SCC 602: (2006) 3 SCC (Cri) 354.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 27-3-2006]

— S. 389(1) *See* Ss. 389(3) and (1)

[262] — S. 389(3) — Applicability of provisions under, which empower the trial court to release a convicted person on bail for such period as will afford him sufficient time to present an appeal and obtain orders of release on bail therein — *Held, S. 389(3) has application when there is a right of appeal — Where prayer for grant of certificate of High Court to appeal under Art. 136 or Art. 134-A of the Constitution is made, there is no right of appeal involved — Therefore, in such cases S. 389(3) has no application — But, position is different when a case falls under Art. 134(1)(a) or Art. 134(1)(b) being covered under S. 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 — Appeal under S. 10 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, falls to the category of cases where there is right of appeal* (Para 5). *Mayuram Subramanian Srinivasan* v. *CBI*, (2006) 5 SCC 752: (2006) 3 SCC (Cri) 83: AIR 2006 SC 2449: 2006 Cri LJ 3285: (2006) 3 KLT 489.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 16-6-2006]

[263] — Ss. 389(3) & (1) — Suspension of sentence pending appeal — Suspension of sentence for certain period by trial court acting under Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — Extension of said period by Supreme Court in appeal under the said Act — Power in relation to — *Exercise of, held, was discretionary but subject to mandatory provisions of Or. 21 R. 13-A of the Supreme Court Rules, 1966 (which require that the accused must first surrender or seek exemption from surrendering before his appeal can be registered) — Contention that Or. 21 R. 13-A cannot in any way affect the powers available to the trial court under S. 9(4) of the 1992 Act, not sustainable* (Para 13). *Mayuram Subramanian Srinivasan* v. *CBI*, (2006) 5 SCC 752: (2006) 3 SCC (Cri) 83: AIR 2006 SC 2449: 2006 Cri LJ 3285: (2006) 3 KLT 489.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 16-6-2006]

— S. 391 *See* Ss. 311 and 391

— Ss. 391, 311, 386, 231, 242, 244, 233, 243 and 247 — Purpose of and role of court in criminal trial *See* CRIMINAL TRIAL — 'Generally', (2006) 3 SCC 374

[264] — S. 392 — Judges of appeal equally divided — Reference to third judge — Course open to — *Held, the third judge is not obliged, either as a rule of prudence or on the score of judicial etiquette, to accept the view of one of the Judges holding in favour of acquittal — Criminal Procedure Code, 1898, S. 429*

The criminal appeal filed by the appellants in the present case was heard by a Division Bench of High Court consisting of judges *S* and *K*. There was a difference of opinion between the two learned Judges. One of the judges i.e. *S* was of the opinion that the appeal should be allowed and the conviction of the appellants and the sentences imposed thereunder were liable to be set aside. In view of the said difference of opinion, the appeal was placed for hearing before a third judge *U*, who came to the conclusion that the appeal deserved to be dismissed. Before the Supreme Court, it was contended by the appellants that the third judge should have leaned in favour of the view taken by *S* as a rule of prudence and should not have differed from the findings recorded by Judge *S* unless the same were perverse or there were strong and weighty reasons for doing so.

Held :

Section 392 CrPC lays down that when an appeal under Chapter XXIX is heard by a High Court before a Bench of Judges and they are divided in opinion, the appeal with their opinions, shall be laid before another Judge of that Court, and that Judge, after such hearing as he thinks fit, shall deliver his opinion and the judgment and order shall follow that opinion. The settled position being that the third judge is under no obligation to accept the view of one of the Judges holding in favour of acquittal of the accused either as a rule of prudence or on the score of judicial etiquette, it is not possible to accept the contention raised by the appellant. (Paras 8 and 10). *Radha Mohan Singh* v. *State of U.P.*, (2006) 2 SCC 450: (2006) 1 SCC (Cri) 661: AIR 2006 SC 951: (2006) 2 All LJ 242: 2006 Cri LJ 1121.

Bench Strength **3**. Coram: *K.G. Balakrishnan, Arun Kumar* and **G.P. Mathur**, JJ. [Date of decision: 20-1-2006]

Tanviben Pankajkumar Divetia v. State of Gujarat, (1997) 7 SCC 156: 1997 SCC (Cri) 1004; Dharam Singh v. State of U.P., (1964) 1 Cri LJ 78: 1962 Supp (3) SCR 769, followed

[265] — S. 394 — Applicability — *Abatement of State appeal under Art. 136 pending in Supreme Court on death of accused — Appeal filed by State against order of High Court which set aside conviction and sentence of accused — Held, said appeal abated on death of accused* — Bondada Gajapathy Rao, *AIR 1964 SC 1645 and* Harnam Singh, *(1975) 3 SCC 343 followed — Criminal Procedure Code, 1898, S. 431* (Para 8). *State of A.P.* v. *S. Narasimha Kumar*, (2006) 5 SCC 683: (2006) 3 SCC (Cri) 54: AIR 2006 SC 2924: (2006) 3 KLT 505.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 13-7-2006]

Bondada Gajapathy Rao v. State of A.P., (1964) 7 SCR 251: AIR 1964 SC 1645: (1964) 2 Cri LJ 598; Harnam Singh v. State of H.P., (1975) 3 SCC 343: 1974 SCC (Cri) 951, applied

— S. 397 *See also* Ss. 227, 228(1)(b) and 397/401

See also Ss. 401, 397, 235, 248 and 255

See also Ss. 403, 397 to 399 and 401

See also Ss. 482, 374(2), 386 and 397

[266] — Ss. 397, 401 and 378 — Revision application filed by the appellant in the High Court against order of acquittal — State's application for grant of leave to appeal filed thereafter, dismissed — *High Court, by impugned order, dismissing the revision on the ground that by dismissal of State's application, the revision petition has become not entertainable — Propriety — Held, High Court should have heard both the applications together — Directions to the High Court to hear both the applications together issued — Penal Code, 1860, Ss. 148 and 302 r/w S. 149 — Scheduled Castes and Tribes — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, S. 3(2)*

An appeal was filed by the informant questioning the correctness of the order of the Division Bench of the High Court, dismissing the revision application of the appellant under Section 397 read with Section 401 CrPC against the order of acquittal passed by the trial court in respect of the accused. The accused were tried for offences punishable under Sections 148 and 302

read with Section 149 IPC and Section 3(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. By judgment dated 22-6-2004 the trial court held the accused persons to be not guilty and directed their acquittal. The State filed application under Section 378(3) CrPC before the High Court for grant of leave to appeal. By order dated 29-4-2005 the said application was rejected. Much before that date i.e. on 20-9-2004, the appellant had filed an application for revision of the order of acquittal, in the High Court. By the impugned order the High Court dismissed the revision application on the ground that the State's application for grant of leave having been dismissed the revision petition was not entertainable.

Allowing the appeal partly,

Held :

The ideal situation would have been to hear both the applications together. It would be appropriate to direct the High Court to hear both the applications for grant of leave as filed by the State and the revision application filed by the informant together in accordance with law. (Paras 10 and 11). *Suga Ram* v. *State of Rajasthan*, (2006) 8 SCC 641: (2007) 1 SCC (Cri) 18: AIR 2006 SC 3258: 2006 Cri LJ 4643.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 18-9-2006]

— S. 398 *See* Ss. 403, 397 to 399 and 401

See also CONSTITUTION OF INDIA — 'Article 136' — Practice and Procedure — Cross-examination, Arts. 136 and 142, (2006) 3 SCC 374

— S. 399 *See* Ss. 403, 397 to 399 and 401

See also Ss. 464, 386, 401 and 399

— S. 401 *See also* Ss. 227, 228(1)(b) and 397/401

See also Ss. 374, 386 and 401

See also Ss. 397, 401 and 378

See also Ss. 464, 386, 401 and 399

[267] — Ss. 401, 397, 235, 248 and 255 — Conviction of government employee — Direction by High Court that conviction will not affect the service career of that employee — Validity of — *Held, was without jurisdiction and, therefore, must be treated as invalid and non est — High Court in exercising its criminal jurisdiction has no authority to prevent the legal consequences which follow the conviction of a government servant — Those are matters governed by the Service Rules — The Service Rules must be allowed to operate in such cases* (Para 4). *Union of India* v. *State of Bihar*, (2006) 10 SCC 509: (2007) 1 SCC (Cri) 122.

Bench Strength **2**. Coram: *B.P. Singh* and *S.H. Kapadia*, JJ. [Date of decision: 15-7-2005]

— Ss. 403, 397 to 399 and 401 — Standing to question conduct of criminal proceedings — Fodder Scam cases *See* CONSTITUTION OF INDIA — 'Article 32' — Public Interest Litigation/PIL, Art. 32, (2006) 6 SCC 613

— S. 406 *See also* Ss. 178(c) and 177 and 406

[268] — S. 406 — Transfer of case — Grounds — Apprehension of danger to lives of petitioners — *Transfer of case pending before Magistrate, Phillour, Distt. Jalandhar (Punjab) to the Court of CJM, Barpeta (Assam), prayed for by the petitioners — Petitioner 2, resident of Phillour, and alleged to be a major, out of love for Petitioner 1, leaving the house of her parents without informing them, and reaching Barpeta (native place of Petitioner 1) and marrying him of her own free will and consent in presence of elders — Certificate of marriage issued by the Kazi — However, Respondent 2 (mother of Petitioner 2) filing FIR against Petitioner 1 and his two brothers under Ss. 363-A, 366 and 120-B IPC before Goraya police station, Mouza Phillour, Distt. Jalandhar — Petitioners apprehending danger to their lives from relatives and family members of Petitioner 2 even to the extent of killing them in the event of their arrest by police of PS Goraya and taking them outside Assam — Hence, in the interest of justice and fair play, transfer petition allowed* (Paras 4, 5, 8 and 10). *Fajlor Rahman* v. *State of Punjab*, (2006) 9 SCC 714: (2006) 3 SCC (Cri) 374: 2006 Cri LJ 3281.

Bench Strength **2**. Coram: *Ashok Bhan* and *Lokeshwar Singh Panta*, JJ. [Date of decision: 10-4-2006]

[269] — S. 406 — Transfer of case outside the State concerned — Prayer made for, by accused — Grounds for — *Accused facing danger to his life as rival gang attacking and causing him serious injuries thrice in State where trial going on — Gunman deputed for security of accused failed to do anything — In these facts and circumstances, held, case pending at Bhopal be transferred to Nasik* (Paras 3 and 4). *Ravir Godbole* v. *State of M.P.*, (2006) 9 SCC 786: (2006) 3 SCC (Cri) 400.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 13-2-2006]

[270] — S. 406 — Transfer of cases filed at numerous places to one common place — Consolidation of cases if envisaged thereby — *Complaint cases under S. 138, Negotiable Instruments Act, 1882 transferred to one place — High Court directing consolidation of all complaints — Sustainability — Held, High Court seems to have misinterpreted the transferring order — All complaints are to be heard in the common place, but not together — Negotiable Instruments Act, 1881, S. 138 — Transfer of cases filed at numerous places to one common place — Consolidation of cases if envisaged. Videocon International Ltd.* v. *Sujana Corpn. Ltd.*, (2005) 13 SCC 125: (2006) 2 SCC (Cri) 129.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *D.M. Dharmadhikari*, JJ. [Date of decision: 5-1-2005]

[271] — S. 406 — Transfer of cases of politically influential persons, to area outside their political influence, to ensure fair trial — *In background stated by the petitioner, case transferred from State of U.P. to State of M.P. — Rule of law — Preservation of — Transfer of criminal cases of politically influential persons, to area outside their political influence, to ensure fair trial*

The petitioner has stated that there will be no chance of fair trial in the State of U.P. as most of the witnesses are afraid to speak against the respondents and one witness was even killed as he deposed against these persons. It was also mentioned that the State Government is not serious. The State Government has already withdrawn the POTA cases against the accused persons and directed the Public Prosecutor to withdraw these cases.

Held :

There is likelihood of miscarriage of justice in the above background. Therefore, in the interest of justice both these cases be transferred to any other court where, in a proper atmosphere, the matter can be dealt with fairly. Hence the cases are transferred to a Special Judge in the State of M.P. (Para 35). *S.K. Shukla* v. *State of U.P.*, (2006) 1 SCC 314: (2006) 1 SCC (Cri) 366: AIR 2006 SC 413: 2006 Cri LJ 148.

Bench Strength **2**. Coram: *B.N. Agrawal* and **A.K. Mathur**, JJ. [Date of decision: 10-11-2005]

[272] — S. 406 — Transfer of criminal case — When warranted — *From New Delhi to appropriate court at Trivandrum on ground of petitioner being unemployed, staying at Trivandrum and it being impossible for him to visit Delhi to defend the case — Respondent having various agencies throughout India — In view of facts and circumstances, criminal complaint transferred to CJM, Trivandrum. Venu Menon* v. *Hathway Investment (P) Ltd.*, (2005) 13 SCC 701: (2006) 2 SCC (Cri) 295.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *B.P. Singh*, JJ. [Date of decision: 29-7-2005]

[273] — S. 406 — Transfer petition — Grounds for — Clubbing of similar cases — *Trial pending at Dharwar, Karnataka — Similar case against same accused pending at Hyderabad in which the petitioners are also co-accused — Having regard to the said fact, held, it would be in the interest of justice if the case presently being tried at Dharwar be transferred to Court of Special Judge (CBI), Hyderabad — Hence, transfer petition allowed accordingly* (Paras 2 and 3). *A. Naveen* v. *CBI*, (2006) 9 SCC 761: (2006) 3 SCC (Cri) 416.

Bench Strength **2**. Coram: *B.P. Singh* and *Arun Kumar*, JJ. [Date of decision: 2-5-2005]

— S. 407 — Transfer applications — Power of "Inspecting Judge" of High Court to pass order on *See* CONSTITUTION OF INDIA, Arts. 227, 235 & 50, (2006) 8 SCC 294

— S. 420 *See* Ss. 197 and 420, 467, 468, 471 and 120-B

— S. 437 *See also* Ss. 439 and 437

See also Ss. 439, 437 and 389

[274] — S. 437 — Bail — Conditions imposed, if warranted — *Bail granted to appellant with the condition that he shall continue to deposit Rs 1 lakh p.m. by way of repayment after release on bail on the assumption that offence had been committed by him, held, onerous and unwarranted* (Para 3). *Shyam Singh* v. *State*, (2006) 9 SCC 169: (2006) 2 SCC (Cri) 613.

Bench Strength **2**. Coram: *B.P. Singh* and *S.H. Kapadia*, JJ. [Date of decision: 11-7-2005]

[275] — Ss. 437 and 439 — Bail — Considerations permissible — Plea that efficacious conduct of defence not possible without accused being on bail — Application for bail on ground of — Held, such a consideration is impermissible

It was then submitted that since the appellant is not on bail, he cannot conduct his defence effectively. If this argument is to be accepted, then logically in every case bail has to be granted. This contention cannot be accepted. (Para 23). *Rajesh Ranjan Yadav* v. *CBI*, (2007) 1 SCC 70: (2007) 1 SCC (Cri) 254.

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 16-11-2006]

[276] — Ss. 437 and 439 — Bail — Fraudulent transactions aggregating to more than Rs 50 crores — *Accused sharebroker, apparently not directly involved in the fraud — Accused directed to be released on bail subject to certain conditions* (Para 3). *Rajendra Kumar Dhanraj Banthia* v. *State of Gujarat*, (2005) 13 SCC 238: (2006) 2 SCC (Cri) 147.

Bench Strength **3**. Coram: *N. Santosh Hegde* and *B.P. Singh*, JJ. [Date of decision: 14-7-2003]

[277] — Ss. 437 and 439 — Bail — Grant of, in non-bailable offence — Relevant considerations — *Gravity and nature of offence, held, must be one of the considerations for grant of bail in such offences — Penal Code, 1860 — Section 302 — Murder Trial — Bail, Section 302* (Para 4). *State* v. *Eslian*, (2006) 9 SCC 785: (2006) 3 SCC (Cri) 399.

Bench Strength **2**. Coram: *H.K. Sema* and *R.V. Raveendran*, JJ. [Date of decision: 28-4-2006]

[278] — Ss. 437 and 439 — Bail — Rejection of bail application by High Court — Propriety — *Allegation that one C, MD of a Bank (Appellant 1) and other Directors of the Bank siphoned off the funds of the*

Bank by bogus loans and fictitious letters of credit in names of their friends, relatives, associates, companies, either without any security or with wholly inadequate security — Such fraudulent transactions aggregating to more than Rs 50 crores — Contention by appellant-accused that: (1) one ***R****, a sharebroker, who according to the appellants was the real beneficiary was released on bail by the Supreme Court; (2) even though the charge-sheet was filed long back on 22-1-2003 but charges had not been framed and trial was likely to be protracted, hence failure to grant bail would amount to detention by way of punishment; and (3) even if prima facie case was established, where presence of accused was readily available for trial and there was no likelihood of the accused tampering with evidence as investigation had been completed, the accused should not be detained — Held, cases of appellants cannot be compared with others who had been released on bail — Cases of appellants were more serious than that of other Directors except* ***C*** *— Besides, one or two Directors had been released on ground of old age and medical problems while the other Directors were released after they repaid the entire dues — Moreover, case of* ***R*** *was different as he was not directly involved in defrauding the Bank — Having regard to the huge amounts involved in the systematic fraud, there was danger of the appellants absconding, if released on bail, or attempting to tamper with evidence by pressurising witnesses — Hence, interference with High Court's order refusing bail uncalled for as grant of relief sought may thwart the course of justice* (Paras 2, 5, 6 and 7). *Himanshu Chandravadan Desai* v. *State of Gujarat*, (2005) 13 SCC 234: (2006) 2 SCC (Cri) 143: AIR 2006 SC 179: 2006 Cri LJ 136: (2006) 101 Cut LT 385.

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 16-11-2005]

Rajendra Kumar Dhanraj Banthia v. State of Gujarat, Criminal Appeal No. 802 of 2003 dated 14-7-2003; Bhagirathsinh v. State of Gujarat, (1984) 1 SCC 284: 1984 SCC (Cri) 63, referred to

[279] — Ss. 437 and 439 — Bail, grant of — Factors that may considered — *Held, though mere period of incarceration and/or likelihood of delays in conclusion of trial are not by themselves singly or conjointly enough for grant of bail, yet both these factors may be taken into consideration* (Para 16). *Chenna Boyanna Krishna Yadav* v. *State of Maharashtra*, (2007) 1 SCC 242: (2007) 1 SCC (Cri) 329.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **D.K. Jain**, JJ. [Date of decision: 8-12-2006]

[280] — Ss. 437 and 439 — Bail to undertrials/ accused after long period of incarceration — *Balancing of right to personal liberty versus interests of society — Factors to be considered — Nature of offence — Conduct of accused in prison, and when on bail when granted on earlier occasions — Membership of Parliament by accused on four occasions — Stage of investigation, trial reached at the point when bail sought — Held, there is no absolute rule that a long period of incarceration by itself would entitle an undertrial to bail — It would be wholly inappropriate to grant bail when the investigation and trial are nearly over, and allegations against the accused are serious — Further, conduct of appellant accused was such that he did not deserve bail — He had deliberately used dilatory tactics for delaying the trial — Lastly, it is irrelevant that appellant has been MP four times — The law is no respecter of persons, and is the same for everyone — Day-to-day conduct of trial directed for expeditious conclusion thereof — However, directed that no court was to entertain any further bail application by appellant accused. Rajesh Ranjan Yadav* v. *CBI*, (2007) 1 SCC 70

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 16-11-2006]

— Ss. 437 and 439 — Cancellation of bail for delaying/protracting trial — Delaying/protracting trial on part of accused — What amounts to *See* CONSTITUTION OF INDIA — 'Article 32' — Public Interest Litigation/PIL, Arts. 32 and 21, (2006) 6 SCC 613

[281] — Ss. 437 and 439 — Grant of bail — Considerations — Relevance of criminal history-sheet of accused — *High Court granting bail to accused charged under Ss. 302/149 etc. IPC solely on ground that only a single firearm injury was sustained by deceased — Criminal history-sheet of accused showing that accused were involved in a series of crimes, including murder — Held, considering this fact, High Court was not justified in granting bail. Narender Kumar Sharma* v. *Manoj Chowdhary*, (2005) 13 SCC 171: (2006) 2 SCC (Cri) 131.

Bench Strength **2**. Coram: *H.K. Sema* and *B.N. Srikrishna*, JJ. [Date of decision: 30-9-2005]

[282] — Ss. 437, 439 and 173 — Fodder Scam cases — Monitoring of, by Supreme Court — Grant/cancellation of bail — *Bail extended from time to time for a period of six months by Supreme Court to monitor trial — Further need for monitoring, if any — Held, it is not now necessary to do so any further — Hence bail granted by Supreme Court directed to continue for duration of case on same terms and conditions — Deliberate protraction of trial or taking of unnecessary adjournments by itself to be a ground for cancellation of bail — Criminal Trial — Generally — Monitoring of case by Supreme Court — Scope. Lalu Prasad* v. *State of Jharkhand*, (2006) 6 SCC 661: (2006) 3 SCC (Cri) 173.

Bench Strength **3**. Coram: *S.N. Variava, P. Venkatarama Reddi* and *Ashok Bhan*, JJ. [Date of decision: 14-7-2003]

[283] — Ss. 437, 439, 438 and 389 — Jurisdiction of court while deciding bail application — Scope of — *Held, does not extend to decide civil disputes as between the parties* (Para 3). *Mahesh Chandra* v. *State of U.P.*, (2006) 6 SCC 196: (2006) 3 SCC (Cri) 23.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 1-5-2006]

— S. 437(5) *See* Ss. 439(2) and 437(5)

— S. 438 *See also* Ss. 437, 439, 438 and 389

[284] — Ss. 438 and 125 — Anticipatory bail — Grant of, by High Court by imposing condition that accused would pay to the victim daughter-in-law a sum of Rs 2000 per month as maintenance — Propriety of — *Held, was not proper — Accused who were jeth and jethani (elder brother-in-law and co-sister) of the victim could not be made liable to deposit the said amount for maintenance of victim — While deciding bail application, the court had no jurisdiction to decide civil disputes as between the parties — Hence, matter remitted to High Court for consideration afresh on merit — High Court to pass appropriate order without imposing any condition of the nature imposed herein* (Para 3). *Mahesh Chandra* v. *State of U.P.*, (2006) 6 SCC 196: (2006) 3 SCC (Cri) 23.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 1-5-2006]

— S. 439 *See also* Ss. 437 and 439

See also Ss. 437, 439 and 173

See also Ss. 437, 439, 438 and 389

See also PREVENTION OF TERRORISM ACT, 2002, Ss. 49(7) proviso, (6) & (9), (2006) 4 SCC 680

[285] — S. 439 — Bail — Relevant considerations for grant of — Telgi stamp scam case — *Appellant, Dy. Supdt. of Stamps, arrested during course of investigation about 1½ years after registration of case against several persons under relevant provisions of Penal Code and Ss. 3(2), 3(5) and 24 of Maharashtra Control of Organised Crime Act, 1999 — Charges could not be framed by the time hearing of the present appeal was concluded — Appellant already in custody for more than 2 years and 3 months — Held, only consideration for Court is whether appellant made out a case for bail — Detailed discussion on scope of the said Act or materials against appellant and arguments for and against him on merits not called for at this stage — Court can neither be carried away by the catchy submission that "bail and not jail" is the rule, nor can it ignore the principle reflected by that catchphrase — On consideration of relevant circumstances and taking note of the period during which appellant had been in custody, held, it is a fit case for grant of bail to the appellant — Appellant be enlarged on bail on his furnishing security to the satisfaction of the Special Court in a sum of Rs 1 lakh with two solvent sureties for the like amount and on his fulfilling other conditions of S. 438(2) — Further, appellant should report before IO between 10.00 a.m. and 12.00 noon every third Saturday of the month and surrender his passport (or file affidavit, if he has none) before Special Court. Babanrao Tukaram Ranjane* v. *State of Maharashtra*, (2006) 9 SCC 422: (2006) 2 SCC (Cri) 562.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **P.K. Balasubramanyan**, JJ. [Date of decision: 12-5-2006]

[286] — S. 439 — Bail application — Interim bail in vogue — Effect — Rejection of, by High Court on ground that it was not maintainable as the petitioner was not in custody — Propriety of — *When bail application was filed petitioner was in custody as he was then on interim bail — His application could have been considered on merits — Therefore held, High Court's order not sustainable — Matter remitted to High Court for consideration afresh on merits — Criminal Trial — Legal Fiction* (Paras 4 and 5). *Kanaksinh Mohansinh Mangrola* v. *State of Gujarat*, (2006) 9 SCC 540: (2006) 3 SCC (Cri) 224.

Bench Strength **2**. Coram: *H.K. Sema* and *Lokeshwar Singh Panta*, JJ. [Date of decision: 7-4-2006]

[287] — S. 439 — Bail in double murder case — Grant of, by High Court without considering material facts on record and without assigning any reasons, held, not justified — *There were eyewitnesses to the occurrence — Sufficient material on record available against accused — No mitigating circumstances — Hence, High Court's order liable to be set aside* (Para 4). *State* v. *Eslian*, (2006) 9 SCC 785: (2006) 3 SCC (Cri) 399.

Bench Strength **2**. Coram: *H.K. Sema* and *R.V. Raveendran*, JJ. [Date of decision: 28-4-2006]

[288] — Ss. 439, 437 and 389 — Bail in cases where a foreigner is involved, or where the offence is committed in a State adjoining the national frontiers — Duty of court — *Held, in an offence of this nature, after grant of bail it becomes difficult to trace out the accused — Hence, courts should be circumspect in granting bail in cases of this nature — Intoxicants — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 37* (Para 4). *Union of India* v. *Abdul Momin*, (2005) 13 SCC 144: (2006) 2 SCC (Cri) 130.

Bench Strength **2**. Coram: *B.P. Singh* and *S.H. Kapadia*, JJ. [Date of decision: 7-10-2005]

— Ss. 439 and 437 *See* CONSTITUTION OF INDIA — 'Article 136' — Scope of interference — Interference in criminal matters — Bail denied, Art. 136, (2006) 1 SCC 732

— Bail application — Order passed by Administrative Judge of High Court during inspection to Sessions Judge to consider bail application of accused and enlarge him on bail — Propriety *See* CONSTITUTION OF INDIA, Arts. 227, 235 & 50, (2006) 8 SCC 294

[289] — **Ss. 439 and 437 — Bail — Grant of — Propriety — Offence under S. 302 r/w S. 201 IPC** — *Accused, an advocate — Reasonable apprehension of the witnesses being tampered with or won over, coerced, threatened or intimidated by accused using his influence and position could not be ruled out — No mitigating circumstances to grant bail in the said non-bailable grave offence — Hence, High Court's order granting bail quashed — Penal Code, 1860, S. 302 r/w S. 201* (Paras 12 to 14). *Anil Kumar Tulsiyani* v. *State of U.P.*, (2006) 9 SCC 425: (2006) 2 SCC (Cri) 565: (2006) 2 KLT 806.

Bench Strength **2**. Coram: **H.K. Sema** and *R.V. Raveendran*, JJ. [Date of decision: 5-5-2006]

[290] — **Ss. 439 and 437 — Bail — Grant of — When improper — Direct evidence available against respondent-accused on record** — *Held, High Court therefore erred in releasing said accused on bail — Bail quashed. Jitendra Singh* v. *Mange Ram*, (2005) 13 SCC 392: (2006) 2 SCC (Cri) 335.

Bench Strength **2**. Coram: *H.K. Sema* and *B.N. Srikrishna*, JJ. [Date of decision: 12-9-2005]

[291] — **Ss. 439 and 437 — Bail — Improper observations made by High Court in order rejecting bail regarding the nature of offence — Expunction of** — *Police filing final report under S. 174 CrPC alleging that offences under Ss. 304-A and 498-A IPC were made out — High Court vide impugned order making observations that material on record indicated that torture was being committed and it was not a case under S. 304-A but a case under S. 302 IPC and, therefore, it declining to grant bail — Held, High Court should not have made such passing observation — Matter should have been left to the appropriate court to take any decision on the materials produced before it — If the superior courts make any such observation the subordinate courts would be unduly swayed by it and may implicitly take certain decision without there being any proper application of mind — Hence, the aforesaid observations deleted — As regards bail, appellant directed to approach the High Court by way of a fresh application* (Paras 4 to 6). *Hitesh Verma* v. *State of Jharkhand*, (2005) 13 SCC 174: (2006) 2 SCC (Cri) 133.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *P.P. Naolekar*, JJ. [Date of decision: 30-9-2005]

[292] — **Ss. 439 and 437 — Bail application — Power of Court to appreciate evidence/materials while dealing with** — *Held, though the Court can make some reference to materials, but it cannot make a detailed and in-depth analysis of the materials and record findings on their acceptability or otherwise, which is essentially a matter for trial — In this view, the course adopted by High Court while dealing with bail application in present case, not proper — Hence, matter remitted to it for consideration afresh* (Para 3). *Nira Radia* v. *Dheeraj Singh*, (2006) 9 SCC 760: (2006) 3 SCC (Cri) 397.

Bench Strength **2**. Coram: *Arijit Pasayat* and *S.H. Kapadia*, JJ. [Date of decision: 10-5-2006]

[293] — **Ss. 439 and 437 — Bail in non-bailable offences (offence under S. 302 r/w S. 201 IPC in this case) — Grant of — Relevant considerations** — *Referring to various circumstances to be considered in an application for bail, held, gravity and nature of offence is one of the considerations in granting bail in such offences — High Court not at all addressed to this issue while granting bail to the respondent — On facts, held, High Court's order granting bail not sustainable* (Paras 10, 11 and 14). *Anil Kumar Tulsiyani* v. *State of U.P.*, (2006) 9 SCC 425: (2006) 2 SCC (Cri) 565: (2006) 2 KLT 806.

Bench Strength **2**. Coram: **H.K. Sema** and *R.V. Raveendran*, JJ. [Date of decision: 5-5-2006]

[294] — **Ss. 439(2) and 437(5) — Bail — Cancellation of, without notice — Propriety** — *Impugned order set aside and High Court directed to reconsider the matter and hear the accused before passing appropriate orders* (Paras 1 and 3). *Gurdev Singh* v. *State of Bihar*, (2005) 13 SCC 286: (2006) 2 SCC (Cri) 177: 2000 Cri LJ 4686.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U. C. Banerjee*, JJ. [Date of decision: 13-3-2000]

[295] — **S. 439(2) and S. 437(5) — Bail — Cancellation of — Propriety of** — *Bail granted by Sessions Court cancelled by the Magistrate — Propriety — Bail granted by Sessions Court subject to certain directions and empowering the Magistrate to consider question of violation of any of the conditions stipulated therein and to pass appropriate orders thereon — Plea by appellant that (i) when the Sessions Court had granted bail, it or any superior court was alone empowered to cancel it; and (ii) it could not have vested such power in the Magistrate — Held, as a general proposition, the first plea raised by the appellant is correct but since there was a specific direction to pass appropriate orders as if the conditions for granting bail had been imposed by the Magistrate himself, the impugned order is legal and valid — Superior court can always give directions of this nature and authorise the subordinate courts to pass appropriate orders* (Paras 6, 7 and 8). *P.K. Shaji* v. *State of Kerala*, (2005) 13 SCC 283: (2006) 2 SCC (Cri) 174: AIR 2006 SC 100: (2005) 4 KLT 856: 2005 Cri LJ 5063.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 27-10-2005]

Gurdev Singh v. State of Bihar, (2005) 13 SCC 286, followed

[296] — S. 439(2) and S. 437(5) — Cancellation of bail — Hearing before, to accused — *Held, accused must be heard before his bail is cancelled — Natural justice — Audi alteram partem — Right to hearing* (Para 6). *P.K. Shaji* v. *State of Kerala*, (2005) 13 SCC 283: (2006) 2 SCC (Cri) 174: AIR 2006 SC 100: (2005) 4 KLT 856: 2005 Cri LJ 5063.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 27-10-2005]

Gurdev Singh v. State of Bihar, (2005) 13 SCC 286, followed

[297] — Ss. 464, 386, 401 and 399 — Passing conviction for offence for which no charge framed — Power of appellate or revisional court — *Held, the said court can do so unless the court is of the opinion that failure of justice would in fact occasion — To judge whether failure of justice occasioned it would be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he was being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself — On facts, though charge framed under S. 302 r/w S. 149 IPC, A-1 convicted under S. 302 IPC — Penal Code, 1860, S. 302 — Passing conviction under, though charge framed under S. 302 r/w S. 149 IPC — Power of appellate or revisional court*

In view of Section 464 CrPC it is possible for the appellate or revisional court to convict an accused for an offence for which no charge was framed unless the court is of the opinion that failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. In the present case, the witnesses examined on behalf of the prosecution, whose testimony has been relied upon, clearly deposed that A-1 was armed with a spear and he assaulted the deceased with the said weapon. In his examination under Section 313 CrPC a specific question in this regard was put to A-1. Therefore, A-1 was made aware of the basic ingredients of the offence and the main facts sought to be established against him were explained to him. Thus, he can be convicted under Section 302 IPC for having committed the murder in question, though the Sessions Judge had framed charge under Section 302 read with Section 149 IPC against all the accused including A-1. (Para 20). *Radha Mohan Singh* v. *State of U.P.*, (2006) 2 SCC 450: (2006) 1 SCC (Cri) 661: AIR 2006 SC 951: (2006) 2 All LJ 242: 2006 Cri LJ 1121.

Bench Strength **3**. Coram: *K.G. Balakrishnan, Arun Kumar* and **G.P. Mathur**, JJ. [Date of decision: 20-1-2006]

Dalbir Singh v. State of U.P., (2004) 5 SCC 334: 2004 SCC (Cri) 1592, applied

— **S. 467** *See* Ss. 197 and 420, 467, 468, 471 and 120-B

— **S. 468** *See also* Ss. 197 and 420, 467, 468, 471 and 120-B

See also PRACTICE AND PROCEDURE — 'Mixed question of fact and law', (2005) 13 SCC 381

[298] — S. 468 — Quashing of proceedings — When warranted — *Petitioner entering into an agreement to sell certain property in Delhi for consideration of Rs 4.5 lakhs out of which Rs 3.5 lakhs was paid by the complainant respondent — Balance amount was to be paid at the time of registration of sale deed and delivery of possession — Respondent alleging that in spite of three legal notices having been given, the petitioner failed to honour the agreement and thus cheated him — He, therefore, filing complaint under S. 406 and S. 420 IPC in the criminal court at* ***M*** *since the agreement was reached there and the amount paid thereat — Held, such complaint is an abuse of process of the court and hence liable to be quashed — Even if all the averments made in the complaint are taken to be correct, yet the case for prosecution under S. 420 or S. 406 of the Penal Code is not made out so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which the respondent parted with the money — Merely because the petitioner had failed to honour the agreement, it cannot be said that he had cheated the respondent — Further, on facts held, complaint filed at* ***M*** *against the petitioner who is a resident of Delhi, seems to be an attempt to pressurise the petitioner for coming to terms with the respondent — Respondent granted liberty to pursue such other remedy under the civil law as may be available to him — Contract Act, 1872, Ss. 37, 51 and 52 — Penal Code, 1860, Ss. 406 and 420* (Paras 1, 2, 6 and 7). *Murari Lal Gupta* v. *Gopi Singh*, (2005) 13 SCC 699: (2006) 2 SCC (Cri) 430.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and *G.P. Mathur* and *P.P. Naolekar*, JJ. [Date of decision: 25-10-2005]

— **S. 471** *See* Ss. 197 and 420, 467, 468, 471 and 120-B

— **S. 482** *See also* Ss. 145 and 482

See also Ss. 198(1) proviso (c) and 482

See also Ss. 203 and 482

See also Ss. 257, 199 and 482

See also ASSOCIATIONS, SOCIETIES AND CLUBS — 'Societies Registration Act, 1860', Ss. 28, 4 and 27, (2006) 9 SCC 206

See also CONSTITUTION OF INDIA — 'Article 226' — Articles 226 and 227, Arts. 226 and 227, (2006) 3 SCC 658

[299] — S. 482 — High Court in exercise of its inherent jurisdiction may, in certain cases, pass adverse remarks against investigator, prosecutor or judicial officer even though they may not be before it and may also later on direct expunction thereof suo motu or at the instance of the person aggrieved

In certain situations, the court exercises a wider jurisdiction e.g. it may pass adverse remarks against an investigator or a prosecutor or a judicial officer, although they are not before it. Expunction of such remarks may also be directed by the High Court at a later stage even suo motu or at the instance of the person aggrieved. (Para 28). *Popular Muthiah* v. *State*, (2006) 7 SCC 296: (2006) 3 SCC (Cri) 245.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 4-7-2006]

[300] — S. 482 — Inherent jurisdiction of High Court — When to be exercised — *Held, should be exercised in extreme exceptions — Criminal complaint filed by the complainant alleging that the appellants had refused to execute the written agreement transferring the plot in his favour for which he had already paid part consideration pursuant to an oral agreement — Cognizance under Ss. 406, 419, 420 and 120-B IPC taken by the Magistrate — High Court by the impugned order dismissing appellants' petition for quashing the cognizance — Held, version of the complainant was self-contradictory since at one place he had stated that the oral agreement to sell took place in July 2002, while at the other he alleged that he started paying consideration amount between 15-7-2000 and 15-12-2002 — No prima facie case was made out against the appellants involving them in the commission of alleged offences — Even if the allegations made in the complaint are accepted to be true and correct the appellants cannot be said to have committed any offence of cheating or criminal breach of trust — Neither can any guilty intention be attributed to them nor can there possibly be any intention on their part to deceive the complainant — Averments of the complaint and the statements of the complainant and his witnesses recorded by the Magistrate would amount to civil liability* ***inter se*** *the parties and not criminal liability — Hence, cognizance taken by the Magistrate was clearly an abuse of the process of court warranting interference in the interest of justice — Instant case was a case of extreme exception where the High Court ought to have exercised its inherent jurisdiction and power to set aside the unwarranted and unjustified order of the Magistrate — Impugned order quashed — Penal Code, 1860, Ss. 406, 419, 420 and 120-B — Matter, on facts, of civil liability and not criminal — Hence cognizance taken by Magistrate deserved to be quashed under S. 482 CrPC* (Paras 4, 10 and 11). *Ram Biraji Devi* v. *Umesh Kumar Singh*, (2006) 6 SCC 669: (2006) 3 SCC (Cri) 176: AIR 2006 SC 2035: 2006 Cri LJ 2782: (2006) 102 Cut LT 385.

Bench Strength **2**. Coram: *Ashok Bhan* and **Lokeshwar Singh Panta**, JJ. [Date of decision: 11-5-2006]

Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri) 47, distinguished

[301] — S. 482 — Inherent power — Doctrine of — Nature and scope of High Court's power under — When can power be exercised — *Proceeding instituted on a complaint can be quashed in exercise of inherent power only where complaint does not disclose any offence or is frivolous, vexatious or oppressive — Power should not be exercised to stifle a legitimate prosecution — Power should be exercised with circumspection, ex debito justitiae to do real and substantial justice and to prevent abuse of process of court — Petition filed under S. 482 by respondent for quashing FIR registered by CBI, alleging commission of offences under IPC and Prevention of Corruption Act, 1988, on ground that CBI had no jurisdiction to register the FIR under Delhi Special Police Establishment Act in absence of requisite consent of the State concerned for operation of the Act in the State — High Court accepting the stand of the respondent — Held, High Court was not justified in quashing the proceedings — Contention regarding lack of jurisdiction of CBI to register the FIR not made out — Police — Delhi Special Police Establishment Act, 1946 (25 of 1946), Ss. 3, 5 and 6*

Respondent 1 a member of Indian Administrative Service, filed a petition under Section 482 CrPC for quashing the FIR registered by the appellant alleging commission of offences punishable under Sections 120-B, 167, 168, 177-A IPC and Sections 13(2) and 13(1) of the Prevention of Corruption Act, 1988, on the ground that CBI had no jurisdiction to register the FIR under the Delhi Special Police Establishment Act, 1946. With reference to Sections 3, 5 and 6 of the Act, Respondent 1 took the stand that CBI had no jurisdiction to register the case. In substance the stands were:

"Consent necessary by the State concerned for operation of the Act had been withdrawn as is evident from the letter dated 26-6-1999 of the Secretary, Special Officer (Home Department), in response to the letter dated 21-11-1989 written by the Government of India, Department of Personnel and Training, New Delhi. (*b*) Consent of the State Government which was given in 1956 was extended in 1989 after the PC Act was promulgated but subsequently the State Government had not considered it appropriate to accord consent to extend some provisions of the Act to the whole of the State of Rajasthan. (*c*) Though the con-

sent had been given by the State of Rajasthan in 1956 and extended in 1989, same did not relate to any particular officer to act in terms of the Act and, therefore, the FIR as lodged had no validity in the eye of the law."

The High Court accepted the stands of the respondent.

It was submitted on behalf of the appellant that the High Court committed patent errors of law. First, prayer of Respondent 1 could not have been adjudicated in a petition instituted under Section 482 of the Code. Secondly, the High Court lost sight of the fact that the notification issued under Section 5 of the Act had not been rescinded or revoked at any point of time. Further an interdepartmental communication has been treated as a notification to hold that the State Government had not extended the notification. The authority of the person who wrote that letter has not been established. In any event, the same cannot be treated to be one covered under Article 166 of the Constitution. Thirdly, there was no specific order required in respect of each officer as has been held in various decisions of this Court

Allowing the CBI's appeal,

Held :

As regards the stands taken by the respondent, there was no notification revoking the earlier notification. The letter on which great emphasis has been laid by Respondent 1 and highlighted by the High Court, the authority to write the letter has not been indicated. It has also not been established that the person was authorised to take a decision. In any event, the same does not meet the requirements of Article 166 of the Constitution. The letter is not even conceptually a notification. The High Court was, therefore, not justified in holding that there was a notification rescinding the earlier notification. (Para 13)

The High Court was, therefore, not justified in quashing the proceedings instituted on the basis of the FIR lodged. (Para 14)

Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under the Code, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. (Para 7)

While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. (Para 7)

In exercise of the powers the Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto. It is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. (Paras 7 and 9)

The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (Para 10)

It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed.

It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (Para 10). *CBI* v. *Ravi Shankar Srivastava*, (2006) 7 SCC 188: (2006) 3 SCC (Cri) 233: AIR 2006 SC 2872.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 10-8-2006]

[302] — S. 482 — Nature, scope, purpose and exercise of power under — Explained — *Held, inherent power is to be exercised sparingly and that too in the rarest of rare cases — It is to be exercised ex debito justitiae, to do real and substantial justice and not to stifle legitimate prosecution — Further held, though no hard-and-fast rule can be laid down as regards cases where such power can be exercised, but the High Court being the highest court of a State should normally refrain from giving decision in a case where the entire facts are incomplete and hazy — More so, when the evidence has not been collected and produced before the Court and the issues involved are of magnitude and cannot be seen in their true perspective without sufficient material*

The exercise of power under Section 482 CrPC is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of CrPC. The inherent powers have been conferred, apart from express provisions of law, which are necessary for proper discharge of functions and duties imposed upon it by law. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under CrPC, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. (Para 8)

While exercising the powers under the Section 482 CrPC, the High Court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. In exercise of the powers the court would be justified in quashing any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. (Para 8)

However, the inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. But no hard-and-fast rule as regards cases in which such power can be exercised can be laid down. (Para 11)

Some categories of cases in which inherent power can and should be exercised to quash the proceedings are:

(*i*) Where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(*ii*) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(*iii*) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

However, in dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the

accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 CrPC, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The inherent power should be exercised sparingly and that too in the rarest of rare cases. (Paras 9 and 10)

When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (Para 11). *State of Orissa* v. *Saroj Kumar Sahoo*, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272: (2006) 1 KLT 366.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Tarun Chatterjee*, JJ. [Date of decision: 7-12-2005]

[303] — S. 482 — Non-quashment — Issue of other directions — Permissibility — *While refusing to quash prosecution under Ss. 498-A, 323, 504 and 506 IPC, High Court directing that accused would not be arrested during pendency of trial provided they paid compensation of Rs 4000 p.m. to the victim — Held, procedure adopted was novel but improper — Exercising suo motu powers, held, notices be issued to accused and State to show cause as to why the direction not to arrest be not set aside* (Paras 3 and 4). *Gir Prasad* v. *State of U.P.*, (2005) 13 SCC 372: (2006) 2 SCC (Cri) 250.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 21-7-2005]

[304] — S. 482 — Petition under S. 482 CrPC for quashing criminal complaint alleging commission of various offences under Penal Code — Disputes arising from breach of contract — Civil remedy available and availed of — Remedy under criminal law — Availability of — *Held, the same is not barred if the allegations disclose a criminal offence — Allegations contained in the complaint, taken on their face value, if, on facts, constituted offences under Penal Code — Maintainability of the petition under S. 482 — However, current practice of misuse of criminal process to put undue pressure in civil disputes deprecated — Penal Code, 1860, Ss. 378, 403, 405, 415 and 425*

The appellant Indian Oil Corporation (IOC) entered into a contract with the respondent NEPC India Ltd., agreeing to supply aircraft fuel. According to the appellant, in respect of the fuel supplied under the contract, the respondent committed default in making payments. The respondent hypothecated its two aircrafts to the appellant under a deed. It was stipulated in clause (2) of the deed that the hypothecation was by way of charge and as security for payment of the amounts due. Clause (3) read with the schedule set out the instalments' schedule for payment of the amount due. Under clause (6), NEPC India declared that it would not assign, sell, pledge, charge, underlet or otherwise encumber or part with the possession, custody or beneficial interest in respect of the two aircrafts without the previous written consent of IOC. It also undertook not to do any act which may diminish the value of the hypothecated property without clearing the entire outstanding amount. Clause (9) provided that if NEPC India failed to pay any of the instalments with interest within the stipulated time, or if any undertaking or assurance given by NEPC India was found to be false, IOC shall have the "right to take possession of the hypothecated property" and sell the same by public auction or by private contract and appropriate the sale proceeds towards the outstanding dues without recourse to court of law. Clause (12) confirmed that NEPC India had handed over the title deeds relating to the aircraft to IOC, and agreed to receive them back only after paying the amounts due. As the respondent failed to pay the first two instalments as per the schedule, appellant stopped supply of fuel. However, subsequently, under a fresh agreement, a revised payment schedule was agreed upon and the appellant agreed to recommence supply of aircraft fuel on "cash-and-carry" basis. But this agreement also came to an end as the instalments were not paid. Apprehending that the respondent may remove one of the hypothecated aircraft from Coimbatore Airport to a place outside its reach, the appellant filed a suit in the High Court seeking a mandatory injunction to the authorities concerned to detain the aircraft so as to enable it to take possession thereof. The High Court granted an interim injunction. In regard to the other hypothecated aircraft kept at Chennai Airport the appellant filed another suit in City Civil Court for a similar mandatory injunction. The appellant then filed two complaints against NEPC India and its two directors under Section 200 CrPC alleging that NEPC India unauthorisedly and clandestinely removed the engines and certain other parts from the two hypothecated aircrafts so as to defeat IOC's right to take possession of the two air-

crafts in view of default in payments made by NEPC India and further that such act was against the terms of the hypothecation deed and would amount to offences punishable under Sections 378 (theft), 403 (dishonest misappropriation of property), 405 (criminal breach of trust), 415 (cheating), 425 (mischief) of the Penal Code, 1860. The respondents thereupon filed petitions under Section 482 CrPC for quashing the said two complaints on the following grounds:

(*i*) The complaints related to purely contractual disputes of a civil nature in respect of which IOC had already sought injunctive reliefs and money decrees.

(*ii*) Even if all the allegations in the complaints were taken as true, they did not constitute any criminal offence as defined under Sections 378, 403, 405, 415 or 425 IPC.

The High Court by a common judgment allowed both the petitions and quashed the two complaints. It accepted the second ground urged by the respondents herein, but rejected the first ground. The said order of the High Court is under challenge in these appeals. On the rival contentions urged, the following points arose for consideration:

(*i*) Whether existence or availment of civil remedy in respect of disputes arising from breach of contract, bars remedy under criminal law?

(*ii*) Whether the allegations in the complaint, if accepted on face value, constitute any offence under Sections 378, 403, 405, 415 or 425 IPC?

Held :

A given set of facts may make out: (*a*) purely a civil wrong; or (*b*) purely a criminal offence; or (*c*) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed of, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not. (Para 12)

In this case, it is no doubt true that IOC has initiated several civil proceedings to safeguard its interests and recover the amounts due. These acts show that civil remedies were and are available in law and IOC has taken recourse to such remedies. But it does not follow therefrom that criminal law remedy is barred or IOC is estopped from seeking such remedy. (Para 15)

The respondents, no doubt, have stated that they had no intention to cheat or dishonestly divert or misappropriate the hypothecated aircraft or any parts thereof. But these are defences that will have to be put forth and considered during the trial. Defences that may be available, or facts/aspects when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At this stage, the only question relevant is whether the averments in the complaint spell out the ingredients of a criminal offence or not. (Para 16)

The High Court was, therefore, justified in rejecting the contention of the respondents that the criminal proceedings should be quashed in view of the pendency of several civil proceedings. (Para 17)

However, there is a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. (Para 13)

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. (Para 14). *Indian Oil Corpn.* v. *NEPC India Ltd.*, (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188: AIR 2006 SC 2780: (2006) 2 Guj LH 753.

Bench Strength **2**. Coram: *H.K. Sema* and **R.V. Raveendran**, JJ. [Date of decision: 20-7-2006]

[305] — S. 482 — Quashing of criminal complaint — When warranted — *Complaint under S. 138 of Negotiable Instruments Act filed by appellant — In pre-summoning statement, complainant stated that as per instruction of accused he deposited two cheques for collection through bank but both the cheques were returned by the bank to the complainant without payment stating "payment stopped by the drawer", that*

for the same he had issued legal notice to the accused and that reply notice was received from lawyer of accused with false allegations — Complaint quashed by High Court in exercise of power under S. 482 on ground that complainant had not stated in clear terms that accused had not paid the amount nor had he given any other explanation withholding the payment, which was mandatory — Held, it was contrary to averments made in the complaint as also the pre-summoning statement of complainant — Hence exercise of power of quashing was unwarranted — Negotiable Instruments Act, 1881, S. 138. T.K. Koya v. *K. Devaraj*, (2005) 13 SCC 705: (2006) 2 SCC (Cri) 294.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *D.M. Dharmadhikari*, JJ. [Date of decision: 5-12-2003]

[306] — S. 482 — Quashing of criminal proceedings — Inherent power of High Court — Exercise of, when justified — *Held, inherent jurisdiction though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in S. 482 — Power to be exercised ex debito justitiae to prevent abuse of process of court — But, should not be exercised to stifle a legitimate prosecution — High Court should refrain from giving a prima facie decision where entire facts are incomplete and hazy, more so when evidence not collected and produced before the Court and the issues involved, whether factual or legal, cannot be seen in their true perspective without sufficient material — Yet no hard-and-fast rule can be laid down for exercise of this extraordinary jurisdiction*

Section 482 of the Criminal Procedure Code does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under the Code, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. (Para 19)

While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. (Para 19)

It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. (Para 19)

The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (Para 20). *Minu Kumari* v. *State of Bihar*, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310: AIR 2006 SC 1937: 2006 Cri LJ 2468: (2006) 2 KLT 588: (2006) 3 Guj LR 2013.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-4-2006]

[307] — S. 482 — Quashing of proceedings — Allegations of mala fides against informant — Effect — *Held, allegations of mala fides against the informant are inconsequent and cannot by themselves be the basis for quashing the proceedings*

When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (Para 11). *State of Orissa* v. *Saroj Kumar Sahoo*, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272: (2006) 1 KLT 366.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Tarun Chatterjee*, JJ. [Date of decision: 7-12-2005]

[308] — S. 482 — Quashing of proceedings — Scope of/Permissible enquiry — Enquiry into reliability of evidence — *Held, High Court should not ordinarily embark upon an enquiry as to reliability of*

evidence to sustain the allegations, which is the function of the trial Judge

Some categories of cases in which inherent power can and should be exercised to quash the proceedings are inter alia where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge. However, in dealing with this category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 CrPC, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The inherent power should be exercised sparingly and that too in the rarest of rare cases. (Paras 9 and 10). *State of Orissa* v. *Saroj Kumar Sahoo*, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272: (2006) 1 KLT 366.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Tarun Chatterjee*, JJ. [Date of decision: 7-12-2005]

[309] — S. 482 — Quashing of proceedings by High Court (i) where investigation was not completed; and (ii) where charge-sheet had been filed; by appreciating the evidence — Permissibility — *Held, impermissible — Where investigation was incomplete, it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial — Further held, even at the stage where charge is framed, the Court has to only prima facie be satisfied about the existence of sufficient ground for proceeding against the accused and for that limited purpose it can evaluate material and documents on record but it cannot appreciate the evidence — On facts further held, High Court in exercise of its powers under S. 482 erred in directing renewal of licence — Moreover, conclusions of High Court, after referring to submissions made by a person who was not even a party to the proceedings are utterly fallacious, were based on surmises and conjectures, unsupported by evidence — Hence, impugned orders set aside*

FIR No. 61 of 2000 was registered for alleged commission of offences under Sections 120-B, 420, 468 and 471 of Penal Code, 1860 read with Sections 13(2) and 13(1)(*a*) of the Prevention of Corruption Act, 1988, against respondent *S*. Criminal Appeal No. 920 of 2003 and the appeal relatable to SLP (Crl.) No. 3199 of 2004 relates to this FIR where investigation was in progress.

Vigilance PS Case No. 25 of 2000 was registered against respondent *B* (father of respondent *N*) on the allegation that he had acquired assets disproportionate to his known source of income. During investigation business premises of *N* were searched and incriminating materials/documents were seized for which FIR No. 43 of 2000 was lodged against *N* and *S*. Appeal relatable to SLP (Crl.) No. 3190 of 2004 relates to FIR No. 43 of 2000 where charge-sheet had been filed.

The High Court in each case while exercising power under Section 482 of the Criminal Procedure Code, 1973, quashed the proceedings. While doing so, it even directed grant of renewal of licence to a company where *N* was a Director and in one of the cases referred to submissions purportedly made on behalf of *B* who was not even a party to the proceedings. Hence the present appeal by the appellant State.

Setting aside High Court's orders and directing completion of investigation within six months in proceedings related to FIR No. 61 of 2000,

Held :

The exercise of power under Section 482 CrPC is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of CrPC. The inherent powers have been conferred, apart from express provisions of law, which are necessary for proper discharge of functions and duties imposed upon it by law. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under CrPC, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. (Para 8)

While exercising the powers under the Section 482 CrPC, the High Court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. In exercise of the powers the court would be justified in quashing any proceeding if it finds that initiation/con-

tinuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. (Para 8)

However, the inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. But no hard-and-fast rule as regards cases in which such power can be exercised can be laid down. (Para 11)

Some categories of cases in which inherent power can and should be exercised to quash the proceedings are:

(*i*) Where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(*ii*) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(*iii*) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

However, in dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 CrPC, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The inherent power should be exercised sparingly and that too in the rarest of rare cases. (Paras 9 and 10)

When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (Para 11)

In the instant case the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under Section 482 CrPC, it is not permissible for the Court to act as if it was a trial court. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about the existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate the evidence. (Para 14)

The learned Single Judges did not keep in view the correct position in law while allowing the petitions filed by the respondents. It is baffling as to how a learned Single Judge while exercising powers under Section 482 CrPC could even direct grant of renewal of licence. It is also baffling how the learned Single Judge referred to submissions purportedly made by the learned counsel for *B* who was not even a party. The conclusions are based on surmises and conjectures without any material to support them and are utterly fallacious. Besides, grant of relief to *B* who was not a party is equally indefensible. (Para 15)

When the factual position of the case at hand is considered in the light of principles of law highlighted, the inevitable conclusion is that the High Court was not justified in quashing the investigation and proceedings in the connected case and the charge-sheet filed. Therefore the High Court's impugned orders are indefensible and are accordingly quashed. (Paras 16 and 17). *State of Orissa* v. *Saroj Kumar Sahoo*, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272: (2006) 1 KLT 366.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Tarun Chatterjee*, JJ. [Date of decision: 7-12-2005]

[310] — S. 482 — Quashing of proceedings on a ground not raised in petition, held, improper — *Again, if any defence on facts had been made then the same being a disputed question of fact it could not be made a ground for quashing the proceedings — Negotiable Instruments Act, 1881, S. 138* (Paras 4 and 5). *M. Gurunathan* v. *R. Amutha*, (2005) 13 SCC 58: (2006) 1 SCC (Cri) 786.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *P.P. Naolekar*, JJ. [Date of decision: 7-2-2005]

[311] — S. 482 — Quashment — Principles restated

The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings which are relevant for the present purpose are:

(*i*) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing of a complaint.

(*ii*) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with *mala fides*/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(*iii*) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(*iv*) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence. *Indian Oil Corpn.* v. *NEPC India Ltd.*, (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188: AIR 2006 SC 2780: (2006) 2 Guj LH 753: (2006) 44 AIC 37 (SC).

Bench Strength **2**. Coram: *H.K. Sema* and **R.V. Raveendran**, JJ. [Date of decision: 20-7-2006]

[312] — S. 482 — Reasons behind grant of inherent powers to High Court under — Explained — *Civil Procedure Code, 1908, S. 151 — Grant of inherent powers to courts — Rationale for — Maxims — Quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest*

No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in Section 482 CrPC which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). (Para 19). *Minu Kumari* v. *State of Bihar*, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310: AIR 2006 SC 1937: 2006 Cri LJ 2468: (2006) 2 KLT 588: (2006) 3 Guj LR 2013.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-4-2006]

[313] — S. 482 — Orders other than for quashment — Impermissibility — *While refusing to quash FIR, High Court directing that till the objections of the accused were decided, coercive process issued against him would remain stayed — Held, such direction in favour of the accused could not have been made under any provision of CrPC — Hence, set aside — Accused to surrender and apply for bail* (Para 3). *Sheela Rani* v. *State of U.P.*, (2005) 13 SCC 409: (2006) 2 SCC (Cri) 256.

Bench Strength **2**. Coram: *D.M. Dharmadhikari* and *Arun Kumar*, JJ. [Date of decision: 18-7-2005]

[314] — Ss. 482, 156 & 173 — Power under S. 482 — When can be exercised, restated — *Interference under S. 482 with statutory power of police to investigate in cognizable offence, held, not permissible — Hence, where investigation in matter still under progress and no police report under S. 173 CrPC submitted to Magistrate concerned, quashing of entire proceedings by High Court under S. 482, held, was not justified*

Section 482 CrPC saves inherent powers of the High Court and such a power can be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice. This power can be exercised to quash the criminal proceedings pending in any court but the power cannot be exercised to interfere with the statutory power of the police to conduct investigation in a cognizable offence. (Para 15)

In the present case, the High Court ought not to have interfered with and quashed the entire proceedings in exercise of power conferred by Section 482 CrPC when the matter was still at the investigation stage. No report as contemplated by Section 173 CrPC had been submitted by the in-charge of the police station concerned to the Magistrate empowered to take cognizance of the offence. The sweeping remark made by the High Court that the initiation of criminal proceedings was abuse of process of court and miscarriage of justice, was wholly unjustified in the circumstances of the case. (Paras 15 and 16). *State of Karnataka* v. *Pastor P. Raju*, (2006) 6 SCC 728: (2006) 3 SCC (Cri) 179: AIR 2006 SC 2825: (2006) 102 Cut LT 612: (2006) 3 KLT 830.

Bench Strength **2**. Coram: **G.P. Mathur** and *Dalveer Bhandari*, JJ. [Date of decision: 4-8-2006]

Union of India v. Prakash P. Hinduja, (2003) 6 SCC 195: 2003 SCC (Cri) 1314; H.N. Rishbud v. State of Delhi, (1955) 1 SCR 1150: AIR 1955 SC 196: 1955 Cri LJ 526; State of W.B. v. S.N. Basak, (1963) 2 SCR 52: AIR 1963 SC 447: (1963) 1 Cri LJ 341; Abhinandan Jha v. Dinesh Mishra, (1967) 3 SCR 668: AIR 1968 SC 117: 1968 Cri LJ 97; State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554: 1980 SCC (Cri) 272, followed

[315] — Ss. 482, 156(3) & 154 — Quashing of subsequent complaints/FIRs filed by same party after lodging an FIR — Permissibility — *Held, prayer made for, on ground that second FIR is not legally permissible — Held, subsequent complaints were not in relation to same offence or occurrence and did not pertain to same parties as alleged in the first report — Distinctions made by High Court between the subsequent complaints and the first report, were fully justified — Hence, subsequent complaints could not be quashed — High Court rightly declined to exercise its powers under S. 482 to quash the said complaints — Exercise of extraordinary powers under Article 136 of the Constitution to interfere in the matter, held, not called for*

The complaints, which were filed in respect of malfeasance and misfeasance within the jurisdiction of the Ahmedabad Police, were not in respect of the same cognizable offence or the same occurrence giving rise to one or more cognizable offences, nor were they alleged to have been committed in the course of the same transaction or the same occurrence as the ones alleged in First CR No. 67 of 2001. (Para 13)

There is a further distinction in that while First CR No. 67 of 2001 pertained to cases concerning one *K* and entities associated with him in the crime, the subsequent complaints pertained to other parties. Further, the FIR being investigated pertained only to criminal acts relating to the Mandvi branch (Mumbai) of the bank in question, while the subsequent complaints being investigated by the State Police pertained to criminal acts at the Shahibaug (Ahmedabad) branch of the Bank. The distinctions drawn by the High Court are fully justified. The High Court was right in observing that the FIRs, which were under challenge before it, were regarding independent and distinct offences. Hence, the FIRs could not be prohibited on the ground that some other FIR had been filed against the petitioner in respect of other allegations made against the petitioner. (Para 14)

The High Court was correctly cognizant of limitations while exercising its powers under Section 482 CrPC, which should not in any event, be exercised lightly. The High Court was justified in declining to exercise its powers under Section 482 CrPC and in refusing to interfere with the orders passed by the learned Chief Metropolitan Magistrate. Finally, considering the nature of the allegations involved and the facts and circumstances of the present case, the Supreme Court too is not inclined to exercise its extraordinary powers under Article 136 of the Constitution to interfere. (Para 15). *Rameshchandra Nandlal Parikh* v. *State of Gujarat*, (2006) 1 SCC 732: (2006) 1 SCC (Cri) 481: AIR 2006 SC 915: (2006) 194 ELT 140: (2006) 2 Guj LR 1365: 2006 Cri LJ 964.

Bench Strength **2**. Coram: *Y.K. Sabharwal, C.J.* and **B.N. Srikrishna**, J. [Date of decision: 13-1-2006]

T.T. Antony v. State of Kerala, (2001) 6 SCC 181: 2001 SCC (Cri) 1048, considered and distinguished on facts

[316] — Ss. 482, 190 & 204 — Quashing of criminal complaint — Ground — Magistrate issuing process without following the procedure and applying his mind — *Held, in such a case the High Court should not have quashed the complaint itself — It should have quashed the order issuing process and directed the Magistrate to reconsider the matter and proceed in accordance with law* (Paras 3 and 4). *Narmada Prasad Sonkar* v. *Sardar Avtar Singh Chabara*, (2006) 9 SCC 601: (2006) 3 SCC (Cri) 350.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 27-3-2006]

[317] — Ss. 482, 190(1)(b), 204, 173, 169 and 362 — Refusal to exercise power under S. 482 — Propriety — *Magistrate by mistake taking cognizance and issuing summons against appellants where police did not find their involvement in the case — Thereafter, on petition of appellants, Magistrate directing to strike off their names from the array of the accused persons — Sessions Judge setting aside the said order holding that the Magistrate did not have any power to recall its earlier order — Challenge to, before High Court — High Court declining to exercise power under S. 482 and confirming the order of Sessions Judge — Considering the facts, held, High Court was not justified in doing so*

In the present case, the police submitted charge-sheet against accused *H* and *S*. In that charge-sheet three of the accused ladies were found to be not involved in the case. When the charge-sheet was placed before the Magistrate, he took cognizance of the offence and directed issuance of processes against *H* and *S* and ladies *M* and *R* on the ground that there was a prima facie case against them for the offences punishable under Sections 341, 323 and 435 read with Section 34 IPC. The appellants *M* and *R* filed a petition before the Magistrate concerned praying therein that due to clerical error the names of the appellants had also been mentioned in the said order and cognizance was taken and summons were issued against them. The Magistrate heard the matter and ordered to strike off their names. This order was challenged before the Sessions Judge who set aside the

order holding that the Magistrate did not have any power, muchless inherent power to recall or review his earlier order. The petition filed under Section 482 CrPC against the order of the Sessions Judge came to be dismissed on the ground that the subordinate court could not have recalled its own order under Section 362 CrPC on the pretext that there was correction of clerical and arithmetical errors.

Allowing the appeal,

Held :

The High Court was not justified in rejecting the application in terms of Section 482 of the Code. This is a case when the cognizance was taken, summons were issued by mistake and the names of the appellants were also mentioned in the order. Since the police have not found any material against the appellants, the CJM without following the procedure as indicated herein could not have directed issuance of summons so far as they are concerned. There was no indication that the CJM disagreed with the opinion of the investigating agency and therefore ordered issuance of summons. On the contrary, as noted by the CJM later that it was a mistake and, therefore, he had ordered to strike off the names of the appellants. The High Court's order is set aside. The names of the appellants shall be struck off from the array of accused persons. (Para 21). *Minu Kumari* v. *State of Bihar*, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310: AIR 2006 SC 1937: 2006 Cri LJ 2468: (2006) 2 KLT 588: (2006) 3 Guj LR 2013.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-4-2006]

[318] — Ss. 482, 374(2), 386 and 397 — High Court can exercise its inherent jurisdiction suo motu in the interest of justice — *It can do so while exercising other jurisdiction such as appellate or revisional jurisdiction — No formal application for invoking inherent jurisdiction necessary — Inherent jurisdiction can be exercised in respect of substantive as well as procedural matters — It can be exercised in respect of incidental or supplemental power irrespective of nature of proceedings*

In respect of the incidental or supplemental power, the High Court can exercise its inherent jurisdiction irrespective of the nature of the proceedings. It is not trammelled by procedural restrictions in that:

(*i*) Power can be exercised suo motu in the interest of justice. If such a power is not conceded, it may even lead to injustice to an accused.

(*ii*) Such a power can be exercised concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefor.

(*iii*) However, the power under Section 482 CrPC is not unlimited. It can inter alia be exercised where the Code is silent, where the power of the court is not treated as exhaustive, or there is a specific provision in the Code; or the statute does not fall within the purview of the Code because it involves application of a special law. It acts ex debito justitiae. It can, thus, do real and substantial justice for which alone it exists. (Para 30). *Popular Muthiah* v. *State*, (2006) 7 SCC 296: (2006) 3 SCC (Cri) 245.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 4-7-2006]

[319] — Ss. 482, 374(2), 386 and 397 — While exercising appellate jurisdiction, High Court, in suo motu exercise of its inherent power, can direct further investigation of the case against persons who were not charge-sheeted and were not accused at the stage of trial but whom High Court felt should have been included in the challan — *But High Court should exercise the inherent jurisdiction sparingly and only after applying its mind to the material on record so as to be satisfied about existence of a strong prima facie case against such persons and also whether any useful purpose is served by issuing such directions particularly after a long lapse of time — Moreover, having regard to facts and circumstances of the present case, High Court should also give an opportunity of hearing to those persons before issuing the directions — But High Court cannot direct the State to take advice of Public Prosecutor as regards the provisions whereunder those persons had to be charged, nor can it direct CB/CID to reinvestigate and prosecute those persons since it cannot direct to reinvestigate the case from a particular angle or by a particular agency*

According to the prosecution, *N*, *M* and *P* came on a motorcycle and stopped near a bus stand. *P* shouted to kill the deceased and left the scene on the motorcycle leaving behind *N* and *M*. Thereupon, *N* took out a sickle and assaulted the deceased who started running and entered into a nearby hotel. *N* and *M* chased the deceased and both of them assaulted the deceased inside the hotel as a result of which the deceased died. A first information report in respect of the incident was lodged by PW 1.

However, no charge-sheet was filed against *P* and *M*, nor copy of the charge-sheet was sent to the first informant. The Magistrate before whom the charge-sheet was filed also did not inform the first informant which was mandatory. *N* alone was committed to the Court of Session. Before the Sessions Judge, all the eyewitnesses allegedly took the names of *P* and *M* as having also played active roles in the entire episode. But the Sessions Judge was neither called upon to exercise nor he suo motu exercised his jurisdiction under Section 319 CrPC. In this situation

N alone was tried and convicted for commission of offence under Section 302 IPC and sentenced to life imprisonment. *N* filed an appeal before the High Court. A Division Bench of the High Court opined that no case was made out to interfere with the judgment of the Sessions Court. The High Court further opined that there was evidence at every stage implicating *P* and *M* in the crime. According to the High Court, action on the part of the investigating officers leaving out the names of *P* and *M* from the array of the accused was not a bona fide error. The High Court also felt that the District Judge ought to have conducted himself fairly in the matter of exercising his jurisdiction under Section 319. The High Court, therefore, made certain adverse comments against the investigating officers, the Public Prosecutors as also the trial Judge for conducting themselves in the manner in which they had discharged their duties. It directed that prosecution of *P* and *M* be launched, that State Public Prosecutor shall advise the State as to under what section they have to be charged and tried and that CB/CID shall take over the mater and reinvestigate and prosecute the appellant and *M*. It also directed the Director General of Police to deeply probe into the lapses on the part of the investigating officers concerned and take follow-up action irrespective of long lapse of time (10 years since the occurrence).

In view of the rival contentions raised in the case, the following questions came up for consideration before the Supreme Court:

(*i*) Whether the High Court while exercising its appellate jurisdiction under Section 374(2) read with Section 386 CrPC could direct further investigation of the case against the persons whom the High Court felt should have been included in the challan on the basis of the materials on record available before the appellate court?

(*ii*) Whether only because of the fact that the appellate power of the High Court in terms of Sections 374(2), 386 and 391 does not contain any specific power to direct further investigation, the High Court lacked jurisdiction for seeking recourse to its inherent and supervisory powers under Sections 482 and 483 CrPC in a case of this nature?

(*iii*) Whether the impugned judgment is wholly unsustainable as prior to issuing the impugned direction, the principles of natural justice had not been complied with?

Allowing the appeals,

Held :

Section 386 CrPC provides for the power of the appellate court. Indisputably, stricto sensu in terms thereof the appellate court cannot direct a person to stand trial. Its jurisdiction is specified thereunder. While exercising its appellate power, the jurisdiction of the High Court although is limited but there exists a distinction but a significant one being that the High Court can exercise its revisional jurisdiction and/or inherent jurisdiction not only when an application therefor is filed but also suo motu. There may not, therefore, be an embargo for the High Court to exercise its extraordinary inherent jurisdiction while exercising other jurisdictions in the matter. Keeping in view the intention of Parliament, while making the new law the emphasis of Parliament being "a case before the court" in contradistinction from "a person who is arrayed as an accused before it" when the High Court is seized with the entire case although would exercise a limited jurisdiction in terms of Section 386, the same, cannot be held to limit its other powers and in particular that of Section 482 CrPC in relation to the matter which is not before it. The High Court while, thus, exercising its revisional or appellate power, may exercise its inherent powers. Inherent power of the High Court can be exercised both in relation to substantive as also procedural matters. (Paras 26, 27 and 29)

In respect of the incidental or supplemental power, the High Court can exercise its inherent jurisdiction irrespective of the nature of the proceedings. It is not trammelled by procedural restrictions in that:

(*i*) Power can be exercised suo motu in the interest of justice. If such a power is not conceded, it may even lead to injustice to an accused.

(*ii*) Such a power can be exercised concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefor.

(*iii*) However, the power under Section 482 CrPC is not unlimited. It can inter alia be exercised where the Code is silent, where the power of the court is not treated as exhaustive, or there is a specific provision in the Code; or the statute does not fall within the purview of the Code because it involves application of a special law. It acts ex debito justitiae. It can, thus, do real and substantial justice for which alone it exists. (Para 30)

There exists a distinction between two classes of cases viz. (*i*) where application of Section 482 is specifically excluded, and (*ii*) where there is no specific provision but limitation of the power which is sought to be exercised has specifically been stated. The inherent power of the High Court can be invoked in respect of the matters covered by the provisions of the Code unless there is specific provision to redress the grievance of the aggrieved party. The said power overrides other provisions of the Code but evidently cannot be exercised in violation/contravention of a statutory

power created under any other enactment. (Paras 32, 34 and 35)

The power to direct enquiry may not, thus, be held to be confined only to the original but also to the appellate jurisdiction. Such a power can be exercised also as against the persons who were not the accused at the stage of trial. Such a power can be exercised even after the trial is over. (Paras 41 and 43)

But the inherent power of the High Court is required to be exercised sparingly. The High Court may or may not in a given situation, particularly having regard to lapse of time, exercise its discretionary jurisdiction. For the said purpose, it was not only required to apply its mind to the materials on record but was also required to consider as to whether any purpose would be served thereby. (Para 56)

The High Court, however, was not correct in issuing a direction to the State to take advice of the State Public Prosecutor as to under what section the appellant has to be charged and tried or directing CB, CID to take up the matter and reinvestigate and prosecute the appellant herein. Such a power does not come within the purview of Section 482 CrPC. Investigation of an offence is a statutory power of the police. The State in its discretion may get the investigation done by any agency unless there exists an extraordinary situation. (Para 46)

Yet again, it is for the Public Prosecutor to discharge his duties in terms of the provisions of the Code of Criminal Procedure. The High Court, thus, has no role to play in such matters. Ordinarily, it is for the Public Prosecutor himself to see to whom and how to render his advice or as to whether the State would like to proceed against an accused or not. (Para 47)

The High Court while passing the impugned judgment did not bear the said principles in mind. It went beyond its jurisdiction in directing the prosecution of the appellant. In a case of this nature, where a superior court exercises its inherent jurisdiction, it indisputably should remind itself about the inherent danger in taking away the right of an accused. The High Court should have been circumspect in exercising the said jurisdiction. When a power under Section 173(8) CrPC is exercised, the court ordinarily should not interfere with the statutory power of the investigating agency. It cannot issue directions to investigate the case from a particular angle or by a particular agency. In the instant case, not only the High Court had asked reinvestigation into the matter, but also directed examination of the witnesses who had not been cited as prosecution witnesses. It furthermore directed prosecution of the appellant which was unwarranted in law. (Para 48)

In this case, the High Court was dealing with an extraordinary situation because:

(*i*) Rightly or wrongly the Magistrate had accepted the final form and did not direct any further enquiry.

(*ii*) Although the investigating officer or the court did not intimate the first informant about filing of the final form in respect of the appellant, it cannot be said that the first informant was not aware thereof.

(*iii*) The first informant neither filed any protest petition nor filed any complaint petition.

(*iv*) Even during the trial, no application was filed before the learned Sessions Judge for summoning the appellant on behalf of the State or the complainant.

(*v*) The learned Sessions Judge did not exercise his power suo motu.

(*vi*) The High Court was hearing an appeal preferred by a convicted person and exercised its extraordinary jurisdiction after 10 years.

(*vii*) Even if it could direct further investigation, it was required to apply its mind as regards existence of a very strong prima facie case therefor and particularly in view of the fact that a period of 10 years had lapsed in the meanwhile.

(*viii*) Had an opportunity of hearing been given, the State also could have shown that for valid reasons the investigating officer did not think it fit to proceed against the appellant and that there were otherwise justifiable reasons to file the final form. (Para 53)

Having regard to the peculiar facts and circumstances of the case, it must be held that before issuing the impugned directions, the High Court should have given an opportunity of hearing to the appellants. (Para 57)

However, this direction is not intended to lay down the law that while the Magistrate directs a further investigation or while a Sessions Judge exercises his jurisdiction under Section 319 CrPC, an accused is entitled to be heard; he is not as he has no right therefor and, thus, the question of hearing him at that stage would not arise. (Para 52). *Popular Muthiah* v. *State*, (2006) 7 SCC 296: (2006) 3 SCC (Cri) 245.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 4-7-2006]

— Ss. 482 and 204 *See* NEGOTIABLE INSTRUMENTS ACT, 1881, Ss. 138, 139 and 141, (2006) 10 SCC 581; Ss. 138 proviso (b), (c) and 142, (2006) 6 SCC 456

[320] — Ss. 482 and 250 — Quashment — Commercial transactions — Misuse of — Criminal proceedings — Need for exercise of power under S. 250 — *If allegations in the complaint, taken at their face value, disclose a criminal offence, complaint cannot be quashed merely because it relates to a*

commercial transaction or breach of contract for which civil remedy is available or has been availed — A commercial transaction or dispute may also involve criminal offence — If it is found that a frivolous criminal complaint had been filed knowing well that remedy lay only in civil law, person who filed such complaint should himself be made accountable in accordance with law at the end of such proceeding — Court should exercise power under S. 250 CrPC frequently where there is malice or frivolousness or ulterior motives on the part of the complainant

The appellant Indian Oil Corporation (IOC) entered into a contract with the respondent NEPC India Ltd., agreeing to supply aircraft fuel. According to the appellant, in respect of the fuel supplied under the contract, the respondent committed default in making payments. The respondent hypothecated its two aircrafts to the appellant under a deed. It was stipulated in clause (2) of the deed that the hypothecation was by way of charge and as security for payment of the amounts due. Clause (3) read with the schedule set out the instalments' schedule for payment of the amount due. Under clause (6), NEPC India declared that it would not assign, sell, pledge, charge, underlet or otherwise encumber or part with the possession, custody or beneficial interest in respect of the two aircrafts without the previous written consent of IOC. It also undertook not to do any act which may diminish the value of the hypothecated property without clearing the entire outstanding amount. Clause (9) provided that if NEPC India failed to pay any of the instalments with interest within the stipulated time, or if any undertaking or assurance given by NEPC India was found to be false, IOC shall have the "right to take possession of the hypothecated property" and sell the same by public auction or by private contract and appropriate the sale proceeds towards the outstanding dues without recourse to court of law. Clause (12) confirmed that NEPC India had handed over the title deeds relating to the aircraft to IOC, and agreed to receive them back only after paying the amounts due. As the respondent failed to pay the first two instalments as per the schedule, appellant stopped supply of fuel. However, subsequently, under a fresh agreement, a revised payment schedule was agreed upon and the appellant agreed to recommence supply of aircraft fuel on "cash-and-carry" basis. But this agreement also came to an end as the instalments were not paid. Apprehending that the respondent may remove one of the hypothecated aircraft from Coimbatore Airport to a place outside its reach, the appellant filed a suit in the High Court seeking a mandatory injunction to the authorities concerned to detain the aircraft so as to enable it to take possession thereof. The High Court granted an interim injunction. In regard to the other hypothecated aircraft kept at Chennai Airport the appellant filed another suit in City Civil Court for a similar mandatory injunction. The appellant then filed two complaints against NEPC India and its two directors under Section 200 CrPC alleging that NEPC India unauthorisedly and clandestinely removed the engines and certain other parts from the two hypothecated aircrafts so as to defeat IOC's right to take possession of the two aircrafts in view of default in payments made by NEPC India and further that such act was against the terms of the hypothecation deed and would amount to offences punishable under Sections 378 (theft), 403 (dishonest misappropriation of property), 405 (criminal breach of trust), 415 (cheating), 425 (mischief) of the Penal Code, 1860. The respondents thereupon filed petitions under Section 482 CrPC for quashing the said two complaints on the following grounds:

(*i*) The complaints related to purely contractual disputes of a civil nature in respect of which IOC had already sought injunctive reliefs and money decrees.

(*ii*) Even if all the allegations in the complaints were taken as true, they did not constitute any criminal offence as defined under Sections 378, 403, 405, 415 or 425 IPC.

The High Court by a common judgment allowed both the petitions and quashed the two complaints. It accepted the second ground urged by the respondents herein, but rejected the first ground. The said order of the High Court is under challenge in these appeals. On the rival contentions urged, the following points arose for consideration:

(*i*) Whether existence or availment of civil remedy in respect of disputes arising from breach of contract, bars remedy under criminal law?

(*ii*) Whether the allegations in the complaint, if accepted on face value, constitute any offence under Sections 378, 403, 405, 415 or 425 IPC?

Held :

A given set of facts may make out: (*a*) purely a civil wrong; or (*b*) purely a criminal offence; or (*c*) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed of, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not. (Para 12)

In this case, it is no doubt true that IOC has initiated several civil proceedings to safeguard its interests and recover the amounts due. These acts show that civil remedies were and are available in law and IOC has taken recourse to such remedies. But it does not follow therefrom that criminal law remedy is barred or IOC is estopped from seeking such remedy. (Para 15)

The respondents, no doubt, have stated that they had no intention to cheat or dishonestly divert or misappropriate the hypothecated aircraft or any parts thereof. But these are defences that will have to be put forth and considered during the trial. Defences that may be available, or facts/aspects when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At this stage, the only question relevant is whether the averments in the complaint spell out the ingredients of a criminal offence or not. (Para 16)

The High Court was, therefore, justified in rejecting the contention of the respondents that the criminal proceedings should be quashed in view of the pendency of several civil proceedings. (Para 17)

However, there is a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. (Para 13)

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. (Para 14). *Indian Oil Corpn.* v. *NEPC India Ltd.*, (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188: AIR 2006 SC 2780: (2006) 2 Guj LH 753.

Bench Strength **2**. Coram: *H.K. Sema* and **R.V. Raveendran**, JJ. [Date of decision: 20-7-2006]

[321] — Ss. 482 and 483 — Inherent jurisdiction of High Court — Scope — When can be exercised — *High Court acts ex debito justitiae to do real and substantial justice — Limitations — Apart from inherent jurisdiction, High Court can also exercise supervisory jurisdiction in some cases under S. 483 and also under Art. 227 — Constitution of India, Art. 227*

Whereas inherent power of a court or a tribunal is generally recognised, such power has been recognised under the Code of Criminal Procedure only in the High Court and not in any other court. The High Court apart from exercising its revisional or inherent power indisputably may also exercise its supervisory jurisdiction in terms of Article 227 of the Constitution of India and in some matters in terms of Section 483 thereof. The High Court, therefore, has a prominent place in the Code of Criminal Procedure vis-à-vis the Court of Session which is also possessed of a revisional power. (Para 24). *Popular Muthiah* v. *State*, (2006) 7 SCC 296: (2006) 3 SCC (Cri) 245.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 4-7-2006]

— **S. 483** *See* Ss. 482 and 483

CRIMINAL RULES OF PRACTICE AND ORDERS, 1931 (MADRAS HIGH COURT)

See HIGH COURTS

CRIMINAL TRIAL

Synopsis

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Synopsis *(contd.)*

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(f) Motive
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32. Wounds and Weapons

1. GENERALLY

[322] — Dismissal of a criminal case for non-prosecution — *Held, impermissible — Counsel for respondent State conceding on this aspect — Matter remitted to High Court for fresh decision* (Paras 3 and 4). *Jaspal Singh (2)* v. *State of Punjab*, (2006) 10 SCC 472: (2006) 3 SCC (Cri) 609(2).

Bench Strength 2. Coram: *Ashok Bhan* and *Lokeshwar Singh Panta*, JJ. [Date of decision: 10-4-2006]

[323] — Dismissal of a criminal case for non-prosecution — Permissibility of — *Notice issued to respondent State on question raised regarding. Jaspal Singh (1)* v. *State of Punjab*, (2006) 10 SCC 471: (2006) 3 SCC (Cri) 609(1).

Bench Strength 2. Coram: *Ashok Bhan* and *Tarun Chatterjee*, JJ. [Date of decision: 21-11-2005]

— Fair trial — What is *See* CONSTITUTION OF INDIA — 'Article 21' — Fair and open trial, Arts. 21 and 14, (2006) 3 SCC 374

— Monitoring of case by Supreme Court — Scope *See* CONSTITUTION OF INDIA — 'Article 32' — Public Interest Litigation/PIL, Art. 32, (2006) 6 SCC 613

See also CRIMINAL PROCEDURE CODE, 1973, Ss. 437, 439 and 173, (2006) 6 SCC 661

[324] — Presiding Judge — Purpose of and role of — Held, is the discovery, vindication and establishment of truth — *Hence, the trial should be a search for the truth and not a bout over technicalities — Presiding Judge must cease to be a spectator and a mere recording machine — He must become a participant in the trial evincing intelligence, active interest and eliciting all relevant materials necessary for reaching the correct conclusion to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community — Restraints on processes for determining the truth — Criminal Procedure Code, 1973, Ss. 391, 311, 386, 231, 242, 244, 233, 243 and 247*

Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice. Restraints on the processes for determining the truth are multifaceted. They have emerged in numerous different ways, at different times and affect different areas of the conduct of legal proceedings. (Paras 30 and 32)

A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing

intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. The courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators. (Paras 37 and 35)

The courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice-often referred to as the duty to vindicate and uphold the "majesty of the law." Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. (Para 35). *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367: (2006) 2 KLT 350: 2006 Cri LJ 1694.

Bench Strength **2**. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 8-3-2006]

[**Ed.**: *See also* Shortnote K in *Zahira (1) case*, (2004) 4 SCC 158.]

[325] — Proof of charge beyond reasonable doubt, held, has to by judicial evaluation of totality of evidence, oral and circumstantial, and not by isolated scrutiny

The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny. (Para 37). *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367: (2006) 2 KLT 350: 2006 Cri LJ 1694.

Bench Strength **2**. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 8-3-2006]

[**Ed.**: *See also* Shortnote AF in *Zahira (1) case*, (2004) 4 SCC 158.]

2. ACCIDENT REGISTER

See 'Appreciation of evidence' — Ocular and medical evidence, below, (2006) 9 SCC 394

3. ACQUITTAL

[326] — Grounds for recording acquittal — *Only because a lesser sentence is imposed by trial court (two years' RI in case of rape), held, the same would not be a ground for acquitting the accused — Matter remanded to High Court for fresh consideration — Criminal Procedure Code, 1973, Ss. 374 and 386 — Penal Code, 1860 — Sections 375 and 376* (Para 5). *State of Rajasthan* v. *Bhanwar Singh*, (2006) 6 SCC 9: (2006) 3 SCC (Cri) 9.

Bench Strength **2**. Coram: *S.B. Sinha* and *P.P. Naolekar*, JJ. [Date of decision: 2-5-2006]

4. APPEAL AGAINST ACQUITTAL

— Power of appellate court to interfere *See* CRIMINAL PROCEDURE CODE, 1973, S. 378 and 386

5. APPRECIATION OF EVIDENCE

See also 'Witnesses', below

Synopsis

(a) Generally
(b) Appellate court's approach
(c) Common intention
(d) Contradictions, inconsistencies, exaggerations or embellishments
(e) Conviction restored
(f) Credibility of witnesses
(g) Non-examination of witnesses
(h) Non-production of documents
(i) Ocular and medical evidence

(a) Generally

— Onus of proof on accused compared with that of prosecution and a defendant in civil proceeding *See* EVIDENCE ACT, 1872, Ss. 101 to 103, (2006) 6 SCC 39

(b) Appellate court's approach

See CRIMINAL PROCEDURE CODE, 1973, Ss. 374 and 386, (2005) 13 SCC 239

(c) Common intention

See PENAL CODE, 1860 — 'S. 34; and Section 302 — Murder Trial' — Common intention, Ss. 302/34

(d) Contradictions, inconsistencies, exaggerations or embellishments

See also CRIMINAL PROCEDURE CODE, 1973, Ss. 378 and 386

— Conflict between medical and ocular evidence *See* PENAL CODE, 1860 — 'Section 302 — Murder Trial' — Conviction reversed, S. 302, (2006) 11 SCC 239

— Contradictions/Discrepancies in evidence — When not fatal *See* 'Falsus in uno falsus in omnibus', below, (2005) 13 SCC 323

[327] — Discrepancy in prosecution case — When material — *Held, if it is not fatal to the prosecution, it does not create any infirmity — Where PW was examined about four years after the incident, he cannot be expected to depose with mathematical precision* (Para 8). *State of A.P.* v. *Kanda Gopaludu*, (2005) 13 SCC 116: (2006) 2 SCC (Cri) 121: AIR 2005 SC 3616.

Bench Strength **2**. Coram: **H.K. Sema** and *P.P. Naolekar*, JJ. [Date of decision: 27-9-2005]

— Discrepancy, overwriting, omission or contradiction in inquest report — Contention as to — When could be entertained *See* 'Inquest report', below, (2006) 2 SCC 450

(d) Contradictions, inconsistencies, exaggerations or embellishments *(contd.)*

[328] — Effect of — *Held, every discrepancy cannot be treated as fatal to the prosecution case — Discrepancy which does not affect the prosecution case materially, does not create infirmity* (Para 6). *Surender Singh* v. *State of Haryana*, (2006) 9 SCC 247: (2006) 2 SCC (Cri) 444.

Bench Strength **2**. Coram: **H.K. Sema** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 17-1-2006]

[329] — Effect of — Minor contradictions or inconsistencies immaterial — *Held, some minor variation in matters of detail is but natural, as much depends on capacity of witness to observe and remember events, particularly minor details — Moreover, the two witnesses had come from different directions and hence it was possible that they might have observed the incident at different stages, though in quick succession — Hence, where their deposition was natural and consistent with the prosecution case, rejection of their evidence for minor discrepancies was not proper*

The trial court has really not recorded any convincing reason for not accepting the testimonies of PW 2 and PW 8. Their evidence appears to be natural having a ring of truth. Much was sought to be made of minor discrepancies in the evidence of the two eyewitnesses, which have been described as glaring contradictions. Some variation in matters of detail is but natural, and much depends on the capacity of a witness to observe and remember events, particularly in matters of minor details. Moreover, the two witnesses came from two different directions, and they may have observed the incident at different stages, though in quick succession. However, such minor discrepancies do not warrant rejection of their evidence. Their deposition is natural and consistent with the case of the prosecution and there is no reason to disbelieve them. (Para 9). *Parbata* v. *State of Rajasthan*, (2005) 13 SCC 398: (2006) 2 SCC (Cri) 252: AIR 2006 SC 747: 2006 Cri LJ 562.

Bench Strength **2**. Coram: *B.P. Singh* and *R.V. Raveendran*, JJ. [Date of decision: 16-11-2005]

[330] — Inconsistency between oral evidence and medical evidence — In such circumstances, the question of relying upon one or the other, held, would depend upon the facts and circumstances of each case — *No hard-and-fast rule can be laid down therefor — Victim allegedly given a blow by axe on the parietal region of the head, injured and ultimately dying — According to one of the two doctors, who examined and treated him, the injury could be caused due to fall on or colliding with a solid object whereas according to the other, the injury was a cut injury — A third doctor, who conducted the post-mortem examination opining that the wound was caused by striking with a hard, heavy and blunt object — In such circumstances, held, it was possible to hold that the injury in question was caused not from the sharp end but from the blunt side of the axe — Wounds and weapons — Incised wounds — Held, wounds produced by blunt weapons, may in certain circumstances simulate appearances of an incised wound — Evidence Act, 1872, Ss. 60 and 46*

R purchased a house from PW 2. One *N* (PW 1) the brother of *R* lodged a FIR alleging that *K* (the appellant herein), *P* and *B* armed with axe, lathi and musal came to their house and asked *R* not to construct wall on their land. That in reply *R* asserted that the land belonged to him whereupon *K* gave a blow by axe on *R*'s head and *B* gave a blow by musal on *R*'s chest. That *S*, wife of *N*, rushed to save *R* but was assaulted by *P* with lathi. *R* was taken to hospital where he died two days after the incident. *K*, *P* and *B* were therefore prosecuted under Section 302 IPC. Two doctors viz. PW 11 and PW 12 examined and treated *R*. According to PW 11, the injury found on the body of *R* could be caused due to fall on or colliding with a solid object. According to PW 12, the deceased had suffered a cut injury. However, according to PW 16, the doctor who had conducted the post-mortem examination, the wound was caused by striking with a hard, heavy and blunt object. Since in the post-mortem examination only one injury was found to have been suffered by the deceased, the trial court held that *P* and *B* had no role to play in the commission of the offence, and therefore, acquitted them. *K*'s appeal was dismissed by the High Court, therefore *K* filed the present appeal.

Before the Supreme Court, the appellant *K* contended that no cut injury having been found by the doctor who conducted the autopsy and furthermore in view of the statement of PW 4 that *B* had inflicted the injury on the head of the deceased, no case could be said to have been made out for convicting the appellant under Section 302 IPC. That in any event, since the deceased suffered only one blow on his person in the course of a quarrel as a result whereof both the groups suffered injuries, only a case under Section 304 Part II should be held to have been made out.

Allowing the appeal in part,

Held :

The trial Judge as also the High Court principally relied on the testimony of PW 3 *S*, wife of the first informant. Although the accused persons were charged for commission of an offence under Section 323 IPC for causing injury on *S*, they were acquitted of the said charge. However, the trial Judge although noticed that *B* had suffered simple injuries on his person and the prosecution had not explained the same but did not proceed to consider the legal implication

thereof. He also came to the conclusion that it was the appellant who inflicted an axe-blow on the head of the deceased. PW 4 although was declared hostile, in his examination-in-chief, stated that prior to the actual incident, abuses were being hurled by the parties. The medical evidence does not tally with the ocular evidence. PW 16 in his evidence categorically stated that under no circumstances injury could be caused by a sharp-cutting weapon. He was definitely of the opinion that the injury was caused by a hard and blunt substance. It may be true that PW 12 had found an incised wound. The place of injury was on the parietal region. In certain situations, the wounds produced by a blunt instrument may simulate appearances of an incised wound. (Paras 9 and 18 to 21)

The possibility of the deceased, thus, having been hit by a hard and blunt weapon could not be totally ruled out. PW 11 in his statement opined that such an injury was also possible to be caused when a person falls on a solid object. The fact that there had been a quarrel between the parties over the construction of a wall was not in dispute. According to PW 2, the said quarrel had been going on for a week. According to prosecution witness the construction had reached up to a height of four feet. It was only thereafter the accused persons came and protested. Abuses had been hurled by both sides. *B* had suffered injury. The genesis of the occurrence, thus, cannot be said to have been proved. All prosecution witnesses attributed specific overt acts to *B* as well as to *P*. Except PW 3 nobody supported the prosecution case in regard to the alleged overt act on the part of *P*. The trial Judge did not also find *B* to be guilty of commission of offence. Although the courts below relied upon the evidence of *S*, injuries on her person had not been proved. All the accused persons were acquitted of the charge of causing an injury on her. Evidently, there was no premeditation on the part of the appellant or his associates. The quarrel must have erupted suddenly. Only one blow was given. It might be with the blunt side of the axe. It may be true that only because one blow was hurled, the same by itself may not be a ground to arrive at a conclusion that the injury inflicted was not sufficient to cause death but in a case of this nature the entire attending circumstances must be taken into consideration for the purpose of finding out the nature of the actual offence committed. (Para 23)

Each case has to be considered on its own facts. A holistic view of the matter in a case of this nature was required to be taken. Both the courts below proceeded on the basis that the deceased suffered an incised wound. As a logical corollary the offence is said to have been committed by the appellant. When, however, oral evidence is found to be inconsistent with the medical evidence, the question of relying upon one or the other would depend upon the facts and circumstances of each case. No hard-and-fast rule can be laid down therefor. A major portion of the story has been discarded by the trial Judge i.e. in regard to the part played by *P* and *B*. Prosecution witnesses gave up their story that *P* had any role to play. *B* was exonerated on the ground that no hard and blunt injury was suffered by the deceased on his chest. Even if one does not accept the statements of PW 4 that it was *B* who caused the head injury with his musal, in view of the statements of other prosecution witnesses it is possible to arrive at a finding that the said injury was caused not from the sharp end but from the blunt side of the axe. (Paras 26 to 28). *Kailash* v. *State of M.P.*, (2006) 11 SCC 420: (2007) 1 SCC (Cri) 476.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 29-9-2006]

Virsa Singh v. State of Punjab, 1958 SCR 1495: AIR 1958 SC 465: 1958 Cri LJ 818, explained

[331] — Inconsistency between prosecution evidence and allegations in FIR regarding number of attacks on deceased and corresponding injuries — *Contention that in FIR it was alleged that five members attacked deceased with sticks, knives and daggers and N murdered him by stabbing him with dagger on his throat, but the post-mortem report and doctor's evidence indicated that deceased sustained only one incised injury corresponding to dagger — Held, said contention was based on wrong translation of Telugu word "dourjanyam" occurring in complaint as "attacked" — Said word did not refer to physical assault but action which is intended to intimidate, threaten and frighten anyone — Therefore, absence of any other injury except the dagger injury caused by N was consistent with allegations in complaint — Penal Code, 1860 — Section 302 — Murder Trial — Appreciation of evidence, S. 302* (Para 17). *Pulicherla Nagaraju* v. *State of A.P.*, (2006) 11 SCC 444: (2007) 1 SCC (Cri) 500: AIR 2006 SC 3010: 2006 Cri LJ 3899.

Bench Strength **2**. Coram: *G.P. Mathur* and **R.V. Raveendran**, JJ. [Date of decision: 18-8-2006]

[332] — Minor contradictions or inconsistencies — *Held, on facts, does not in any way dilute the otherwise cogent evidence of injured witnesses — Further held, discrepancy was not of such vital nature so as to affect the credibility of witnesses* (Para 8). *Lachman Singh* v. *State of Haryana*, (2006) 10 SCC 524: (2007) 1 SCC (Cri) 123: AIR 2006 SC 2763: 2006 Cri LJ 4041.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 28-7-2006]

[333] — Minor discrepancies in statement of PWs — Effect — *Held, every such discrepancy not fatal to*

(d) Contradictions, inconsistencies, exaggerations or embellishments *(contd.)*

the prosecution case — Discrepancies which do not materially affect the prosecution case do not create any infirmity (Para 9). *State of A.P.* v. *S. Rayappa*, (2006) 4 SCC 512: (2006) 2 SCC (Cri) 353: 2006 Cri LJ 1616.

Bench Strength **2**. Coram: **H.K. Sema** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 14-2-2006]

[334] — Normal discrepancies and material discrepancies — *Distinction between — Words and phrases — "Normal discrepancies", material discrepancies*

Normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. The courts have to label the category to which a discrepancy may be categorised. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. (Para 10). *Syed Ibrahim* v. *State of A.P.*, (2006) 10 SCC 601: (2007) 1 SCC (Cri) 34: AIR 2006 SC 2908: 2006 Cri LJ 4087.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 27-7-2006]

[335] — Unlawful assembly of 27 persons variously armed, alleged to have assaulted *S* and when the womenfolk ran to save him they too were assaulted — *Trial court disbelieving the eyewitnesses on account of minor inconsistencies in their evidence as regards exact site of occurrence and failure to name all those who assaulted them and exact nature of injuries — Held, it is difficult, if not impossible, for all eyewitnesses to specifically refer to distinct acts of each member of an unlawful assembly — Minor discrepancies not sufficient to disbelieve the evidence of injured eyewitnesses* (Para 14). *Kallu* v. *State of M.P.*, (2006) 10 SCC 313: (2006) 3 SCC (Cri) 546: AIR 2006 SC 831: 2006 Cri LJ 799.

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 4-1-2006]

(e) Conviction restored

See PENAL CODE, 1860 — 'Section 302 — Murder Trial' — Section 302 or Section 304, S. 302 or S. 304 Pt. I/Pt. II, (2005) 13 SCC 360

(f) Credibility of witnesses

See also PENAL CODE, 1860, S. 300 Thirdly, (2006) 9 SCC 211

[336] — Direct evidence — Effect — Non-recovery of certain items — *PW categorically stating that all the accused named in FIR had come to the office of deceased armed with pistols/katas, entered inside and started firing indiscriminately — This statement corroborated by evidence of two other PWs — In view of the direct evidence of eyewitnesses, held, non-recovery of the offending car said to have been used by accused would be no ground to disbelieve otherwise the creditworthy evidence of PWs* (Para 5). *Nisar Khan* v. *State of Uttaranchal*, (2006) 9 SCC 386: (2006) 2 SCC (Cri) 568.

Bench Strength **2**. Coram: **H.K. Sema** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 25-1-2006]

— Hostile witness *See* 'Witnesses' — Hostile witness, below, (2005) 13 SCC 255

[337] — Murder of the deceased while he was sleeping on the "katta" by the accused-appellants, alleged — PWs 8 and 9 declared hostile — *PW 2 (brother of the deceased) in his examination-in-chief stating that he witnessed the occurrence from the front yard right from the beginning, but in his cross-examination stating that he came out on hearing the howling of his mother and saw the dead body of his brother — Similarly, PW 1 (mother of the deceased and an alleged eyewitness) inventing a false story about existence of motive, but later resiling from the same and stating that the relations between the two families were cordial — Her narration of events before murder also found to be untrue and she making improvements in her deposition in an attempt to project the presence of PW 2 from the very beginning — No bloodstains found either on her clothes or PW 2's — Her explanation that she only touched the body of the deceased to find whether he was alive highly unnatural — Inconsistencies between evidence of PW 10 (Havaldar) and PW 11 (IO) as regards how they reached the place of occurrence and recorded the complaint raising serious doubts as to when the FIR was recorded — Complaint lodged by PW 1 not read out to her by the police officer, her thumb impression taken on five blank papers and she was never questioned by the police — Held, appellants entitled to benefit of doubt and acquitted of all charges* (Paras 11, 12, 16, 17, 20, 23, 24 and 25). *Bhimapa Chandappa Hosamani* v. *State of Karnataka*, (2006) 11 SCC 323: (2007) 1 SCC (Cri) 456.

Bench Strength **2**. Coram: **B.P. Singh** and *Altamas Kabir*, JJ. [Date of decision: 20-9-2006]

— Solitary witness' testimony when can be the basis of conviction *See* 'Witnesses' — Solitary witness, below, (2006) 11 SCC 323

(g) Non-examination of witnesses

[338] — Adverse inference — When may be drawn — *Held on facts, the same could not be drawn against prosecution for not examining the three injured wit-*

nesses — Those witnesses were not ready to depose on behalf of the prosecution out of fear of the accused persons — Evidence of other eyewitnesses could not be discarded merely because of the said non-examination — Evidence Act, 1872, Ss. 114 Ill. (g), 134 and 135 — Criminal Procedure Code, 1973, Ss. 231 and 242 (Para 11). *Rajan Rai* v. *State of Bihar*, (2006) 1 SCC 191: (2006) 1 SCC (Cri) 209: AIR 2006 SC 433: 2006 Cri LJ 163.

Bench Strength **2**. Coram: **B.N. Agrawal** and *A.K. Mathur*, JJ. [Date of decision: 10-11-2005]

[339] — Non-examination of independent witness — Effect — *Two murders having taken place in a single day, there was terror in the public and S. 144 CrPC was imposed in the town — Held, in such a situation, surcharged with tension and fear psychosis, it was not expected of any witness to depose about the incident — Non-examination of independent witness in such a situation would be no ground to discard the otherwise creditworthy testimony of the eyewitnesses* (Para 8). *State of A.P.* v. *S. Rayappa*, (2006) 4 SCC 512: (2006) 2 SCC (Cri) 353: 2006 Cri LJ 1616.

Bench Strength **2**. Coram: **H.K. Sema** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 14-2-2006]

[340] — Non-examination of two out of five eyewitnesses — Adverse inference, if warranted — *Trial court recording that on several dates the two witnesses were produced by prosecution for their examination but on all the occasions accused took time and did not allow prosecution to examine them — When they did not appear, trial court issued warrant of arrest against them on request of Public Prosecution, but all the time they were found absent from their houses and they were reported to have gone out for discharging their duties as drivers — Held, prosecution was always ready and willing to examine the witnesses and had taken all possible steps for their examination but the witnesses could not be examined for reasons beyond its control — Hence, no adverse inference should be drawn against the prosecution for non-examination of two eyewitnesses* (Para 8). *State of J&K* v. *S. Mohan Singh*, (2006) 9 SCC 272: (2006) 2 SCC (Cri) 484: AIR 2006 SC 1410: 2006 Cri LJ 1691.

Bench Strength **2**. Coram: **B.N. Agrawal** and *A.K. Mathur*, JJ. [Date of decision: 9-3-2006]

(h) Non-production of documents

— Adverse inference due to non-production of document in possession *See* EVIDENCE ACT, 1872, S. 114 Ill. (g)

(i) Ocular and medical evidence

[341] — No material inconsistency between, found — Effect — *Genuineness of entries made in accident registers of the hospital where the injured persons were admitted, not questioned — Although doctor had mistakenly recorded in the register, as it appeared to him at that time, that the victim had suffered simple injuries with abrasion whereas ring fingers of both hands of the victim were cut-off, but the fact that the victim was sent to duty doctor/emergency for treatment, held, indicated that contents of the injury report were correct — Further, although it was recorded in the accident register that right middle finger of another victim was cut-off but merely because investigating officer had negligently failed to recover the cut finger, held, it was not sufficient to discard the consistent evidence of eyewitnesses — Accident Register*

As regards the injury suffered by PW 10, the doctor referred to the accident register. He found that the ring fingers of both her hands were injured. He might have mistakenly stated that the same appeared to him, at that time, to be a simple injury with abrasion, but the fact remains that she was also sent to the duty doctor/emergency for treatment, which indicates that the contents of the injury report were correct. It may be that the duty doctor had not been examined, but the same is not very material for the purpose of the present case. As regards the nature of injuries suffered by PW 10, she had not been cross-examined. From the accident registers of the hospital it was clearly established that the said witnesses suffered injuries. There was no material contradiction between the ocular evidence and medical evidence. The genuineness or otherwise of the said accident registers is not in question. Correctness of the entries made therein is not in issue. Even no suggestion has been given to the doctor that the entries made in the said accident registers were not correct. Only because the investigating officer was negligent and did not make any attempt to recover the cut fingers of PW 3, the same by itself would not be sufficient to discard the consistent evidences of all the eyewitnesses. It is therefore, not possible to accept the contention that the medical evidence is contrary to the ocular evidence and Section 149 is not attracted. (Paras 23 to 28 and 34). *Munivel* v. *State of T.N.*, (2006) 9 SCC 394: (2006) 2 SCC (Cri) 581: AIR 2006 SC 1761: 2006 Cri LJ 2133: (2006) 2 KLT 682.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-4-2006]

6. ASSUMPTIONS OR PRESUMPTIONS

See EVIDENCE ACT, 1872, Ss. 4, 114, 79 to 90-A, 111-A, 112, 113-A, 113-B and 114-A

7. BAIL

— Denial or grant of, propriety *See* CRIMINAL PROCEDURE CODE, 1973, S. 437 and S. 439

8. BENEFIT OF ACQUITTAL TO CO-ACCUSED

[342] — Benefit of, to non-appealing accused — Granted (Para 3). *Arokia Thomas* v. *State of T.N.*, (2006) 10 SCC 542: (2007) 1 SCC (Cri) 140.

Bench Strength **2**. Coram: *B.N. Agrawal* and *D.K. Jain*, JJ. [Date of decision: 2-5-2006]

[343] — On facts, held, acquittal of co-accused was immaterial since evidence as against the appellant was different from evidence as against other accused (Para 11). *Deepak Chandrakant Patil* v. *State of Maharashtra*, (2006) 10 SCC 151: (2006) 3 SCC (Cri) 491: AIR 2006 SC 1708.

Bench Strength **2**. Coram: **B.P. Singh** and *Altamas Kabir*, JJ. [Date of decision: 8-3-2006]

9. BLOODMARKS/TRAIL AND BLOODSTAINS

[344] — Absence of bloodstains — Mere absence of bloodstains on the clothes of PWs who had taken the injured to hospital, that by itself may not be sufficient to discredit testimony of the PWs, having regard to facts and circumstances of the case (Para 13). *Subhash Maruti Avasare* v. *State of Maharashtra*, (2006) 10 SCC 631: (2007) 1 SCC (Cri) 54.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 19-10-2006]

10. BURDEN OF PROOF

See also 'Circumstantial evidence' — Last seen together, below, (2006) 10 SCC 681

[345] — Burden of proof, held, is on the prosecution to prove guilt of accused beyond reasonable doubt — Charge of bride burning — *Merely because deceased suffered burn injuries inside the room but her husband though present at home, had not sustained any burn injury, held, burden would not shift on the accused husband having regard to facts of the case — S. 106 of Evidence Act not applicable — Evidence Act, 1872, S. 106*

It is not possible to accept the view that the burden of proof lies upon the appellant in terms of Section 106 of the Evidence Act, as also in view of the fact that the appellant did not suffer any burn injury. In a criminal case, it is for the prosecution to prove the involvement of an accused beyond all reasonable doubt. It was not a case where both, husband and wife, were last seen together inside a room. The incident might have taken place in a room but the prosecution itself has brought out evidences to the effect that the children who had been watching television were asked to go out by the deceased and then she bolted the room from inside. As they saw smoke coming out from the room, they rushed towards the same and broke open the door. Section 106 of the Evidence Act, cannot be said to have any application whatsoever. (Paras 9 and 10)

The absence of injury on the person of the appellant cannot be a ground for believing the prosecution case. All the prosecution witnesses categorically stated that the fire was doused by pouring water. In that situation, no wonder, the appellant did not suffer any burn injury. It is not the case of the prosecution that in fact any other person had suffered any burn injury in the process of putting out the fire. (Para 12). *P. Mani* v. *State of T.N.*, (2006) 3 SCC 161: (2006) 2 SCC (Cri) 36: AIR 2006 SC 1319: 2006 Cri LJ 1629.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 24-2-2006]

11. CIRCUMSTANTIAL EVIDENCE

Synopsis

(a) Conviction based on circumstantial evidence
(b) Guilt established
(c) Guilt not established
(d) Injuries on accused
(e) Last seen together
(f) Motive

(a) Conviction based on circumstantial evidence

See also PENAL CODE, 1860 — 'Section 302 — Murder Trial' — Circumstantial evidence, S. 302, (2005) 13 SCC 387

[346] — Conviction not sustained — *Held, to base a conviction on circumstantial evidence prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused — Further held, suspicion, however grave, cannot be a substitute for a proof and the courts should take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence — Conviction of appellants on the basis of circumstantial evidence, in the instant case, not sustainable — Criminal Procedure Code, 1973, Ss. 374 & 386*

The appellants were prosecuted for murdering one *R* between 10.30 p.m. of 14-6-1998 and 5 a.m. of 15-6-1998. The deceased was a motor mechanic. A quarrel allegedly took place between the deceased and the appellants at about 9 p.m. on 14-6-1998 on two grounds: (*1*) Jeep of A-1 had not been satisfactorily repaired by the deceased although he had taken repair charges in respect thereof; and (*2*) over a woman. PW 8 and others were said to have intervened and the deceased thereafter went to his residence. At about 10.30 p.m. the appellants went to his residence in an auto and A-1 called him on the ground that his jeep required some repairs. PW 1, elder brother of the deceased came out and saw A-1 on the road and A-2 and A-3 standing by an auto on which the words "swathi" were inscribed. Next day dead body of the

deceased was found in front of PW 4's house who informed about the same to PW 1. PW 1 went to the spot and thereafter to the police station. But instead of going directly in, he waited for about 10 minutes in front of the police station and got the FIR scribed from PW 5 who was passing by, despite the fact that he was related to one SI. Although FIR was dispatched to the court at 0645 hours, nothing was brought on record to show as to when it reached the court. Testimony of PW 9, an eyewitness to the occurrence was relied on by the trial court to base the conviction, whereas the same was disbelieved by the High Court. However, the High Court upheld the conviction and sentence passed by the Sessions Judge holding that the appellants had quarrelled with the deceased and thus motive was proved. Hence, the present appeal.

Allowing the appeals,

Held :

The statement of PW 9 (an eyewitness) was recorded three days after the incident by the police. PW 8, eyewitness to the quarrel, was also examined two days after the incident. No TI parade was held. PW 6, the auto driver, in whose auto the appellants were alleged to have driven to the deceased's house was examined after three years and three months and he deposed that the words written on his auto were "suverna" and not "swathi" as disclosed in FIR and hence identity of the auto by the first informant was doubtful. Besides, his conduct in not going to the police station to lodge the FIR though he was related to one of the police officer, and waiting for someone to scribe the same on road makes his story doubtful. It is a mystery as to how PW 1 could name all the accused in the FIR since he had neither stated in the FIR nor in his deposition in the court that he knew the appellants. Moreover, since he had not met PW 8 before lodging the FIR there was no reason for him to know about the alleged quarrel between the appellants and the deceased. Testimony of other PWs neither appears credible nor corroborating each other. Though Appellant 2 was a history-sheeter and his whereabouts must have been known to the police, why the appellants were arrested after a fortnight has not been explained. Further, why the FIR was dispatched at 0645 hours when the court was situated in the same town is also difficult to understand. Exact time of death has also not been proved, particularly when no specific reason therefor had been assigned in the post-mortem report. Even the recovery of knife was said to have been made only from Appellant 2.

Considering aforementioned circumstantial evidence the conviction of the appellants cannot be sustained.. *Ramreddy Rajesh Khanna Reddy* v. *State of A.P.*, (2006) 10 SCC 172: (2006) 3 SCC (Cri) 512: AIR 2006 SC 1656: (2006) 2 Guj LH 271.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 24-3-2006]

[347] — Conviction when can be based on circumstantial evidence

In order to sustain a conviction on circumstantial evidence, the prosecution must establish that the chain of circumstances only consistently point to the guilt of the accused and is inconsistent with his innocence. (Para 16). *State of U.P.* v. *Desh Raj*, (2006) 9 SCC 278: (2006) 2 SCC (Cri) 489: AIR 2006 SC 1712: 2006 Cri LJ 2108.

Bench Strength **2**. Coram: **H.K. Sema** and *C.K. Thakker*, JJ. [Date of decision: 9-3-2006]

[348] — When can conviction be solely based on — *Principle restated*

The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence. (Para 12). *Trimukh Maroti Kirkan* v. *State of Maharashtra*, (2006) 10 SCC 681: (2007) 1 SCC (Cri) 80: (2006) 4 KLT 638.

Bench Strength **2**. Coram: **G.P. Mathur** and *R.V. Raveendran*, JJ. [Date of decision: 11-10-2006]

(b) Guilt established

[349] — Submission that there was no direct evidence to prove the participation of the appellant in the commission of the offence in view of the rejection of the evidence of the eyewitnesses — *Held, in a case based on circumstantial evidence, there may be no direct evidence to prove the manner of assault or the actual participation of an accused in the assault on the deceased resulting in his death, but if the circumstantial evidence is conclusive in nature, a conviction on the basis of such circumstantial evidence may be recorded — It must be shown that the circumstances established on record are incriminating in nature, and the chain of circumstances established by the prosecution is so complete as not to be consistent with any other hypothesis except the guilt of the accused* (Para 13). *Deepak Chandrakant Patil* v. *State of Maharashtra*, (2006) 10 SCC 151: (2006) 3 SCC (Cri) 491: AIR 2006 SC 1708.

Bench Strength **2**. Coram: **B.P. Singh** and *Altamas Kabir*, JJ. [Date of decision: 8-3-2006]

(c) Guilt not established

[350] — **For proving guilt of an accused under S. 302, the prosecution must lead evidence to connect all links in a chain so as to point guilt of the accused alone and nobody else** — *In the instant case, evidence adduced clearly fell short of the requirement and hence conviction of appellants under Ss. 302/34 unsustainable* (Paras 21 and 25). *Sunny Kapoor* v. *State (UT of Chandigarh)*, (2006) 10 SCC 182: (2006) 3 SCC (Cri) 522: AIR 2006 SC 2242: 2006 Cri LJ 2920.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-5-2006]

(d) Injuries on accused

[351] — **Non-explanation of, by prosecution — Effect** — *Held, though injuries received by accused need not be explained in all situations but a different situation arises when right of private defence is claimed — On facts held, injuries on person of accused having not been explained by the prosecution gives rise to credibility of defence put forth by the appellant as regards exercise of right of private defence — More so, when no evidence had been produced by the prosecution to show that accused were the aggressors* (Para 16). *Jalaram* v. *State of Rajasthan*, (2005) 13 SCC 347: (2006) 2 SCC (Cri) 202: AIR 2006 SC 618: 2006 Cri LJ 528.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 24-11-2005]

[352] — **Non-explanation of, by the prosecution — Effect** — *Held, is a very important circumstance, but mere non-explanation may not affect the prosecution in all cases, particularly when the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries* (Para 10). *Raj Pal* v. *State of Haryana*, (2006) 9 SCC 678: (2006) 3 SCC (Cri) 361.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 19-4-2006]

[353] — **Non-explanation of, by the prosecution — Effect — Evidence produced by defence at best only showing minor injuries suffered by the accused** — *Hence held, it would not dislodge the prosecution case, which was fully established by evidence of creditworthy witnesses, supported by medical evidence* (Paras 9 to 12). *Mohinder Singh* v. *State of Punjab*, (2006) 10 SCC 418: (2006) 3 SCC (Cri) 578: AIR 2006 SC 1639.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.P. Naolekar**, JJ. [Date of decision: 24-3-2006]

[354] — **Number of injuries — Inference(s) that may be drawn** — *Held, number of injuries is not always a safe criterion for determining who the aggressor was — No universal rule that whenever the injuries are on the body of the accused persons, a presumption must necessarily be raised that the accused persons had caused injuries in exercise of the right of private defence — Defence has to further establish that the injuries so caused on the accused probabilise the version of the right of private defence* (Para 10). *Raj Pal* v. *State of Haryana*, (2006) 9 SCC 678: (2006) 3 SCC (Cri) 361.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 19-4-2006]

(e) Last seen together

See also PENAL CODE, 1860 — 'Section 302 — Murder Trial' — Circumstantial evidence, Ss. 302 and 376, (2006) 9 SCC 278

[355] — **Dowry death — Prosecution of the husband for** — *Where prosecution succeeds in leading evidence to show that (i) either the husband and wife were last seen together, or (ii) the offence was committed in the dwelling house, where the husband also normally resided, and if the accused husband offers no explanation as to the injuries received by his wife or if the explanation is false, held, there is strong circumstance which indicates that he committed the crime — Burden of proof — Penal Code, 1860, S. 304-B*

Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. (Para 22)

The appellant was plying a tempo in order to earn his livelihood. The deceased was being ill-treated and harassed on account of non-fulfilment of demand of Rs 25,000 which the appellant wanted for purchasing a tempo. The deceased was often beaten and was sometimes not given food. After the deceased had been murdered, information was sent to her parents that she had died on account of snakebite, which was reiterated when they reached the house of the appellant. Everyone in the village had been told that the deceased had died on account of snakebite and the Police Patil, believing the said information to be true, had lodged an accidental death report at the police station. The medical evidence, however, showed that she

had died on account of asphyxia due to strangulation. The body of the deceased was purposely placed in a sitting posture with her back taking support of the wall so that no one may suspect that she had actually been killed as a result of strangulation and may believe the version of snakebite given by the appellant and his parents. The appellant in his statement under Section 313 CrPC did not offer any explanation as to how she received the injuries which were found on her body. Recovery of some articles of the deceased was made at the pointing out of the appellant. The circumstances unerringly point to the guilt of the accused and they are inconsistent with his innocence. (Para 23)

The High Court was, therefore, perfectly right in allowing the appeal filed by the State and in convicting the appellant under Section 302 IPC and sentencing him to life imprisonment thereunder. (Para 24). *Trimukh Maroti Kirkan* v. *State of Maharashtra*, (2006) 10 SCC 681: (2007) 1 SCC (Cri) 80: (2006) 4 KLT 638.

Bench Strength **2**. Coram: **G.P. Mathur** and *R.V. Raveendran*, JJ. [Date of decision: 11-10-2006]

[356] — Submission that the evidence of the wife and the son of the deceased to the effect that the deceased was last seen in the company of the appellant became irrelevant in view of the fact that no direct evidence to prove assault on the deceased was led by the prosecution — *Held, such a submission does not help the appellant because the circumstance of "last seen together" is a circumstance which considered with other evidence on record has been found to prove the guilt of the accused — It is not as if the prosecution has tried to set up a case other than what was sought to be proved by the hostile eyewitnesses — Since the eyewitnesses turned hostile, the circumstance that the appellant had accompanied the deceased and was last seen by him was only treated as one of the circumstances in the chain of circumstances to prove his guilt* (Para 14). *Deepak Chandrakant Patil* v. *State of Maharashtra*, (2006) 10 SCC 151: (2006) 3 SCC (Cri) 491: AIR 2006 SC 1708.

Bench Strength **2**. Coram: **B.P. Singh** and *Altamas Kabir*, JJ. [Date of decision: 8-3-2006]

[357] — The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible — *Further held, even in such cases courts should seek some corroboration* (Paras 27 and 28). *Ramreddy Rajesh Khanna Reddy* v. *State of A.P.*, (2006) 10 SCC 172: (2006) 3 SCC (Cri) 512: AIR 2006 SC 1656: (2006) 2 Guj LH 271.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 24-3-2006]

(f) Motive

See also 'Motive', below

12. DELAY

See PENAL CODE, 1860, Ss. 396 and 395, (2005) 13 SCC 247

13. DNA TEST

— Ordering of DNA tests *See* FAMILY LAW — 'Parentage', (2006) 9 SCC 363

14. FAILURE TO EXPLAIN INJURIES ON ACCUSED

[358] — Effect — *Held, although it is not for the prosecution to prove injuries on the person of the accused, in each and every case irrespective of the nature thereof, but in a case where plea of right of exercise of self-defence was raised, the question required serious consideration since the prosecution had neither proved beyond reasonable doubt that the appellants were the aggressors, nor that they had the common intention to cause death. Nagarathinam* v. *State*, (2006) 9 SCC 57: (2006) 3 SCC (Cri) 212: AIR 2006 SC 1736: 2006 Cri LJ 2120.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-4-2006]

[359] — Effect — Held, not fatal to every prosecution case — *Each case depends upon the fact situation obtaining therein — In the present case, injuries on accused sufficiently explained — Not necessary for the prosecution to adduce any further evidence — Hence, those injuries lost all significance* (Paras 59, 64, 66 and 75). *Triloki Nath* v. *State of U.P.*, (2005) 13 SCC 323: (2006) 2 SCC (Cri) 178: AIR 2006 SC 321: 2005 All LJ 3757.

Bench Strength **2**. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 28-10-2005]

Kashiram v. State of M.P., (2002) 1 SCC 71: 2002 SCC (Cri) 68; Vajrapu Sambayya Naidu v. State of A.P., (2004) 10 SCC 152: 2004 SCC (Cri) 1768, distinguished on facts

15. FAIR TRIAL

— Fair trial — What is *See* CONSTITUTION OF INDIA — 'Article 21' — Fair and open trial, Arts. 21 and 14, (2006) 3 SCC 374

See also JURISPRUDENCE, (2006) 3 SCC 374

16. FALSUS IN UNO FALSUS IN OMNIBUS

[360] — Scope and applicability of the principle in India — Duty of court in such situations, explained

The maxim "falsus in uno falsus in omnibus" has no application in India and the witness or witnesses cannot be branded as liar(s). The maxim "falsus in

uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of the rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called a mandatory rule of evidence. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, his conviction can be maintained. It is the duty of the court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient, or to be not wholly credible. Falsity of material particular would not ruin it from the beginning to end. (Para 10)

In a given case, it is always open to a court to differentiate the accused who had been acquitted from those who were convicted where there are a number of accused persons. (Para 10)

The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because the witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respect as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. An attempt has to be made to separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (Para 10). *Syed Ibrahim* v. *State of A.P.*, (2006) 10 SCC 601: (2007) 1 SCC (Cri) 34: AIR 2006 SC 2908: 2006 Cri LJ 4087.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 27-7-2006]

[361] — Principle of — Held, is not a rule of evidence — *Duty of court is to disengage the truth from falsehood, to sift the grain from the chaff — In the present case; on facts, evidence of PWs could not be discarded merely because of certain contradictions/discrepancies therein* (Paras 30, 29 and 27). *Triloki Nath* v. *State of U.P.*, (2005) 13 SCC 323: (2006) 2 SCC (Cri) 178: AIR 2006 SC 321: 2005 All LJ 3757.

Bench Strength **2**. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 28-10-2005]

Kashiram v. State of M.P., (2002) 1 SCC 71: 2002 SCC (Cri) 68; Vajrapu Sambayya Naidu v. State of A.P., (2004) 10 SCC 152: 2004 SCC (Cri) 1768, distinguished on facts

[362] — Falsus in uno falsus in omnibus — Not an acceptable principle in India as very often prosecution implicates not only real assailants but also implicates innocent persons — *Court can always discriminate and find out who were the real assailants and who were not — Hence merely because co-accused had been acquitted, entire prosecution case cannot be rejected* (Para 15). *Major Singh* v. *State of Punjab*, (2006) 10 SCC 499: (2007) 1 SCC (Cri) 118.

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 19-10-2006]

[363] — Partly truthful witness — Acceptability of truthful part of testimony — *Where a witness is not found to be wholly truthful, held, that part of his evidence which inspires confidence may be accepted and the unreliable part discarded* (Para 8). *Haji Khan* v. *State of U.P.*, (2005) 13 SCC 353: (2006) 2 SCC (Cri) 336.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.P. Naolekar**, JJ. [Date of decision: 23-11-2005]

[364] — Plea of — Held on facts, was clearly untenable — *Said maxim does not occupy the status of rule of law and is merely a rule of caution — Further held, it merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence"*

Even if a major portion of the evidence is found to be deficient, in case the residue is sufficient to prove guilt of an accused, conviction can be maintained. It is the duty of the court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the court to convict an accused notwithstanding the fact that evidence of some of the witnesses has been found to be deficient. Falsity of a particular material witness or material particular would not ruin it from the beginning to the end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liars. (Para 17). *S.*

Sudershan Reddy v. *State of A.P.*, (2006) 10 SCC 163: (2006) 3 SCC (Cri) 503: AIR 2006 SC 2716: 2006 Cri LJ 4033.

Bench Strength **2**. Coram: **Arijit Pasayat** and *R.V. Raveendran*, JJ. [Date of decision: 20-7-2006]

17. IDENTIFICATION OF ACCUSED AT NIGHT

[365] — **Absence of source of light — But event alleged to have taken place at about 7 p.m. in April** — *Held, identification of the accused was possible. S. Sudershan Reddy* v. *State of A.P.*, (2006) 10 SCC 163: (2006) 3 SCC (Cri) 503: AIR 2006 SC 2716: 2006 Cri LJ 4033.

Bench Strength **2**. Coram: **Arijit Pasayat** and *R.V. Raveendran*, JJ. [Date of decision: 20-7-2006]

[366] — **Source of light in which the eyewitnesses (PW 1 and PW 13) identified the accused not stated in the FIR** — *PW 1, during course of investigation, keeping mum when confronted by the IO, as regards the source of light — He, however after 2 ½ years disclosing before the Sessions Court that he identified the accused in the light of motorcycle — PW 13 claiming to have identified the accused in the torchlight from a distance of 400 feet, which appearing to be highly improbable — Held, in view of such statement, evidence of PW 1 becomes highly doubtful, especially when this statement had been made for the first time in the Sessions Court — Hence, conviction of the appellant on the basis of evidence of PWs 1 and 13 especially in view of the fact that there is no other material for upholding the conviction, cannot be sustained — Appellant entitled to benefit of doubt* (Para 2). *Arokia Thomas* v. *State of T.N.*, (2006) 10 SCC 542: (2007) 1 SCC (Cri) 140.

Bench Strength **2**. Coram: *B.N. Agrawal* and *D.K. Jain*, JJ. [Date of decision: 2-5-2006]

18. INJURIES

See 'Medical Jurisprudence', below

19. INQUEST REPORT

[367] — **Discrepancy, overwriting, omission or contradiction therein — Contention as to, when maintainable** — *Held, such contention could not be entertained unless the attention of the author thereof is drawn to the said fact and he is given an opportunity to explain the same when examined in court* (Para 11). *Radha Mohan Singh* v. *State of U.P.*, (2006) 2 SCC 450: (2006) 1 SCC (Cri) 661: AIR 2006 SC 951: (2006) 2 All LJ 242: 2006 Cri LJ 1121.

Bench Strength **3**. Coram: *K.G. Balakrishnan, Arun Kumar* and **G.P. Mathur**, JJ. [Date of decision: 20-1-2006]

— Necessary contents of — Scope of investigation under S. 174 CrPC *See* CRIMINAL PROCEDURE CODE, 1973, S. 174, (2006) 2 SCC 450

20. INVESTIGATION

[368] — **Illegal investigation — Effect of** — *Held, proceedings may not be quashed only on the basis of illegal investigation unless miscarriage of justice is shown — In the present case the accused had suffered miscarriage of justice as the investigation conducted was not fair — Criminal Procedure Code, 1973, Ss. 156, 157 & 161 — Prevention of Corruption Act, 1988, S. 17 — Prevention of Corruption Act, 1947, S. 5-A* (Para 21). *State Inspector of Police* v. *Surya Sankaram Karri*, (2006) 7 SCC 172: (2006) 3 SCC (Cri) 225.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 24-8-2006]

[369] — **Illegal investigation — Investigation without valid sanction — Duty of courts in case of** — *Held, courts are obliged to go into the question whether it resulted in prejudice to the accused — Prevention of Corruption Act, 1988, S. 17 — Investigation without valid sanction — Duty of courts in case of — Prevention of Corruption Act, 1947, S. 5-A — Investigation without valid sanction — Duty of courts in case of* (Para 20). *State Inspector of Police* v. *Surya Sankaram Karri*, (2006) 7 SCC 172: (2006) 3 SCC (Cri) 225.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 24-8-2006]

— Lapses or omissions on the part of IO — Adverse inference from *See* EVIDENCE ACT, 1872, S. 114 Ill. (g), (2005) 13 SCC 624; *See also* 'Site plan', below, (2005) 13 SCC 624

[370] — **Manner in which to be carried out** — *Held, a fair investigation is expected from the prosecution — Investigation to be carried out not only from the stand of the prosecution, but also the defence, particularly in view of the fact that the onus of proof may shift to the accused at a later stage — Criminal Procedure Code, 1973, Ss. 156, 157 & 161 — Prevention of Corruption Act, 1988, S. 17 — Prevention of Corruption Act, 1947, S. 5-A* (Para 19). *State Inspector of Police* v. *Surya Sankaram Karri*, (2006) 7 SCC 172: (2006) 3 SCC (Cri) 225.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 24-8-2006]

21. JUVENILE/CHILD ACCUSED

[371] — **Age of accused — Determination of — Examination of accused by Medical Board — Necessity of** — *Held, in a case where evidence is not clear and convincing, the report of the Medical Board is of some assistance — Accused directed to be examined by a Medical Board for ascertaining his age — Juvenile Justice (Care and Protection of Children) Act, 2000, Ss. 49 and 2(k) — Juvenile Justice Act, 1986, Ss. 32 and 2(h) — Evidence Act, 1872, S. 45*

(Paras 4 and 5). *Sunil Rathi* v. *State of U.P.*, (2006) 9 SCC 603: (2006) 3 SCC (Cri) 351.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 10-3-2006]

[372] — Determination of age of accused — Date of occurrence or production in court — *Whether should be made on the basis of the date on which occurrence took place or when the accused is produced before the court* — Pratap Singh, *(2005) 3 SCC 551, reiterated in this regard — Juvenile Justice Act, 1986, Ss. 2(h) & 32 — Juvenile Justice (Care and Protection of Children) Act, 2000, Ss. 2(k) & 49 — U.P. Children Act, 1951 (1 of 1952), S. 2(4)*

The said question came up for consideration in the context of the provisions of the Juvenile Justice Act, 2000 before a Constitution Bench in *Pratap Singh*, (2005) 3 SCC 551. It was held that the date of commission of the offence would be the relevant date. In terms of the aforementioned decision such determination is required to be made even if at the relevant time, the juvenile crossed the age of eighteen years. (Paras 24 and 25). *Ravinder Singh Gorkhi* v. *State of U.P.*, (2006) 5 SCC 584: (2006) 2 SCC (Cri) 632: AIR 2006 SC 2157: (2006) 4 All LJ 269: 2006 Cri LJ 2791.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 12-5-2006]

Pratap Singh v. State of Jharkhand, (2005) 3 SCC 551: 2005 SCC (Cri) 742, followed

[**Ed.**: *See* especially paras 79 and 83 of *Pratap Singh case.*]

[373] — Grant of benefit under the relevant Juvenile/Child Act — Plea raised in relation to — Duty of court — *Held, court to consider the said plea with great care on the basis of materials on record — It should not give the said benefit to a person who is not juvenile as the same would cause injustice to victim — Juvenile Justice Act, 1986, Ss. 2(h) & 32 — Juvenile Justice (Care and Protection of Children) Act, 2000, Ss. 2(k) & 49 — U.P. Children Act, 1951 (1 of 1952), S. 2(4)*

It would be a duty of the court of law to accord the benefit to a juvenile, provided he is one. To give the same benefit to a person who in fact is not a juvenile may cause injustice to the victim. Where the plea relating to juvenile is raised, having regard to the beneficial nature of the socially-oriented legislation, such a plea should be examined with great care. Each plea must be judged on its own merit. Each case has to be considered on the basis of the materials brought on record. (Paras 39 and 30). *Ravinder Singh Gorkhi* v. *State of U.P.*, (2006) 5 SCC 584: (2006) 2 SCC (Cri) 632: AIR 2006 SC 2157: (2006) 4 All LJ 269: 2006 Cri LJ 2791.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 12-5-2006]

[374] — Plea of appellant that he was minor on the date of occurrence — Plea raised for the first time before Supreme Court — Maintainability — *Since appellant was a history-sheeter involved in 34 other cases, it was unlikely that he was not aware of his legal right — His father was "Pradhan" of village — Appellant was all along represented by a lawyer — No exception taken by or on behalf of appellant for joint trial where all other accused were adults — Appellant was never serious for projecting his plea of being a minor — However, Supreme Court asking trial court to determine the said plea — Trial court holding the appellant to be a minor on the basis of school-leaving certificate — Said certificate found by Supreme Court to be unreliable — On these facts, held, appeal filed claiming benefit under the relevant Children Act was liable to be dismissed — Juvenile Justice Act, 1986, Ss. 2(h) & 32 — Juvenile Justice (Care and Protection of Children) Act, 2000, Ss. 2(k) & 49 — U.P. Children Act, 1951 (1 of 1952), S. 2(4)* (Paras 10, 18, 39, 40, 35, 41 and 42). *Ravinder Singh Gorkhi* v. *State of U.P.*, (2006) 5 SCC 584: (2006) 2 SCC (Cri) 632: AIR 2006 SC 2157: (2006) 4 All LJ 269: 2006 Cri LJ 2791.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 12-5-2006]

[375] — Whether the accused was a "child" under the relevant Children/Juvenile Act on the date of commission of offence — New plea of, raised before Supreme Court — Absence of relevant materials on record for determination thereof — Relief — *Though the said question not gone into by trial court in the absence of any plea in this regard, the said court estimated the age of accused as 28 years on 17-12-1998 during his cross-examination under S. 313 CrPC — Submission that in view of the said estimated age, the accused was juvenile on the date of commission of offence i.e. 18-11-1985 — Accused a literate — Except the aforesaid estimated age, no proof available on record as regards the date of birth of accused — Hence, no definite conclusion could be arrived at that the accused was a child under the relevant Act on the date of commission of offence — Matter remitted to Sessions Judge to determine the question as regards the age of accused as on the date of commission of offence and, thereafter, to deal with him accordingly — Juvenile Justice Act, 1986, Ss. 2(h) and 32 — Juvenile Justice (Care and Protection of Children) Act, 2000, Ss. 2(k) and 49 — Bihar Children Act, 1982 (54 of 1982), Ss. 2(d) and 32. Jitendra Ram* v. *State of Jharkhand*, (2006) 9 SCC 428: (2006) 2 SCC (Cri) 623: AIR 2006 SC 1933: 2006 Cri LJ 2464.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 25-4-2006]

Krishna Bhagwan v. State of Bihar, 1989 Pat LJR 507(2) (FB), approved

22. LEGAL FICTION

See CRIMINAL PROCEDURE CODE, 1973, S. 439, (2006) 9 SCC 540

23. MEDICAL JURISPRUDENCE

[376] — Rape — Abrasions on the person of the prosecutrix — Inference to be drawn — *Held, fact that such abrasions may also be caused by self-infliction is no ground for holding that they were so caused, when there is direct evidence to the effect that the prosecutrix was pushed on to the ground and raped*

Further, the trial court was also impressed by the fact that the medical evidence does not support the case of the prosecution. This is also a finding contrary to the record. Some simple injuries were caused to the prosecutrix when she was felled on the ground and raped. The abrasions found on her person certainly corroborate the case of the prosecution. The fact that abrasions may also be caused by self-infliction is no ground for holding that in this case they were so caused, when there is direct evidence to the effect that she was pushed on the ground and rape was committed. The fact that in his cross-examination the doctor admitted that such injuries may be self-inflicted, is no basis for holding that the injuries were in fact self-inflicted, in the absence of any evidence to prove that. This is particularly so when the case of the prosecution is clear and categorical that the appellant caught the prosecutrix by her neck and felled her on the ground and committed rape. Therefore, the medical evidence does support the case of the prosecution. The absence of any stains of semen on the clothes of the prosecutrix or the appellant is of no consequence in this case since the clothes of the appellant were seized and examined after four days of the occurrence. (Para 8). *Parbata* v. *State of Rajasthan*, (2005) 13 SCC 398: (2006) 2 SCC (Cri) 252: AIR 2006 SC 747: 2006 Cri LJ 562.

Bench Strength **2**. Coram: *B.P. Singh* and *R.V. Raveendran*, JJ. [Date of decision: 16-11-2005]

[377] — Rape of six months' pregnant woman by felling her to ground, not leading to abortion — Inference — *Held, did not imply that victim was consenting party*

Lastly, there was no justification for the trial court to have concluded that it was sexual intercourse by consent. This finding is based solely on conjectures and suspicion. The medical evidence discloses that the internal wall of the vagina of the prosecutrix was congested, having reddish colour. In his cross-examination, the doctor did state that this could be caused by sexual intercourse in ordinary course. From this, the trial court jumped to the conclusion that since the prosecutrix, who was pregnant did not abort and gave birth to a normal healthy child after three months, this was a case in which it must be held that the prosecutrix was a consenting party. Such reasoning of the trial court is perverse. (Para 10). *Parbata* v. *State of Rajasthan*, (2005) 13 SCC 398: (2006) 2 SCC (Cri) 252: AIR 2006 SC 747: 2006 Cri LJ 562.

Bench Strength **2**. Coram: *B.P. Singh* and *R.V. Raveendran*, JJ. [Date of decision: 16-11-2005]

24. MOTIVE

[378] — Absence of sufficient grudge to commit murder alleged — Status of families of deceased and accused to be considered — *They belonging to lower strata of the society — One of the accused wanted to assault the deceased earlier on the same day but on that occasion he saved himself by running away from the place — Held, there is no reason to disbelieve the testimony of PW that the accused had been nurturing grudge against the deceased and thus had a motive* (Para 12). *Subhash Maruti Avasare* v. *State of Maharashtra*, (2006) 10 SCC 631: (2007) 1 SCC (Cri) 54.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 19-10-2006]

[379] — Failure to prove motive or establish conspiracy thereof — Effect — *Held, does not mean that entire prosecution case would crumble — Where evidence of eyewitnesses is found reliable, absence of proof of motive or the conspiracy to commit the crime would not dislodge the prosecution from securing conviction of the accused on the basis of reliable evidence* (Para 9). *Haji Khan* v. *State of U.P.*, (2005) 13 SCC 353: (2006) 2 SCC (Cri) 336.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.P. Naolekar**, JJ. [Date of decision: 23-11-2005]

[380] — In order to bring home the guilt of an accused it is not necessary for the prosecution to prove the motive — *Existence of motive is only one of the circumstances to be kept in mind while appreciating the evidence adduced by the prosecution — If the evidence of the witnesses appears to be truthful and convincing, failure to prove the motive is not fatal to the case of the prosecution* (Para 13). *Bhimapa Chandappa Hosamani* v. *State of Karnataka*, (2006) 11 SCC 323: (2007) 1 SCC (Cri) 456.

Bench Strength **2**. Coram: **B.P. Singh** and *Altamas Kabir*, JJ. [Date of decision: 20-9-2006]

[381] — Motive — Not material where direct evidence available — *It is material where case is based on circumstantial evidence* (Para 8). *Major Singh* v. *State of Punjab*, (2006) 10 SCC 499: (2007) 1 SCC (Cri) 118.

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 19-10-2006]

[382] — Motive by itself is not sufficient to prove the guilt (Para 29). *Ramreddy Rajesh Khanna Reddy* v. *State of A.P.*, (2006) 10 SCC 172: (2006) 3 SCC (Cri) 512: AIR 2006 SC 1656: (2006) 2 Guj LH 271.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 24-3-2006]

State of M.P. v. Paltan Mallah, (2005) 3 SCC 169: 2005 SCC (Cri) 674, relied on

[383] — Political rivalry — Contention that because of political rivalry some of the accused may have been falsely implicated — Sustainability — *Held, in political murders there may be a likelihood of revenge, but if the witnesses have spoken of the incidents consistently and given meticulous evidence corroborated by other items of evidence, the possibility of false implication can be ruled out especially when the witnesses know the assailants and there is no likelihood of any mistaken identity* (Para 9). *Gonchi Rajashekhar Reddy* v. *State of A.P.*, (2006) 9 SCC 535: (2006) 3 SCC (Cri) 332: 2006 Cri LJ 2378.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *Arun Kumar*, JJ. [Date of decision: 3-4-2006]

[384] — Political rivalry — Plausibility of events — *Contention that where leader of a political party had been murdered earlier on that day it was highly improbable that rather than performing his funeral, his close relatives would mount an attack on the deceased on the very same night — Held, plea raised by the appellants cannot be accepted in view of the direct evidence given by the witnesses — Enmity and passion to assault members of rival group was so much in existence that they would retaliate at the earliest point of time* (Para 6). *Gonchi Rajashekhar Reddy* v. *State of A.P.*, (2006) 9 SCC 535: (2006) 3 SCC (Cri) 332: 2006 Cri LJ 2378.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *Arun Kumar*, JJ. [Date of decision: 3-4-2006]

25. NON-EXPLANATION OF INJURIES ON ACCUSED

— Effect *See* PENAL CODE, 1860, Ss. 96, 97 and 100, (2006) 11 SCC 434

26. PLACE OF OCCURRENCE

[385] — Rape — Trial court opining that it was not possible to commit rape in an open field with a "rasta" (path) nearby — Sustainability — *In absence of any evidence therefor, held, such finding of the trial court unsustainable — More so, in view of the consistent evidence of the PWs that it was a forest or at least a place where bushes were growing — Evidence Act, 1872, S. 114 — "Common course of ... human conduct" — Presumptions as to — Instances*

The trial court was unduly influenced by the fact that the occurrence took place in an open field and there was a "*rasta*" nearby and hence it was not possible to commit rape at such a location. The finding of the trial court is not supported by any evidence on record because the consistent evidence of the prosecution witnesses is that the place where the occurrence took place was a forest or at least a place where bushes were growing and, therefore, the trial court was not justified in jumping to the conclusion that it was an open field where the offence was committed. (Para 6). *Parbata* v. *State of Rajasthan*, (2005) 13 SCC 398: (2006) 2 SCC (Cri) 252: AIR 2006 SC 747: 2006 Cri LJ 562.

Bench Strength **2**. Coram: *B.P. Singh* and *R.V. Raveendran*, JJ. [Date of decision: 16-11-2005]

27. PROSECUTION

[386] — Prosecution — Onus of proof — Accused addressed a letter to Superintendent of Police and sent a copy thereof by post to Inspector of Police who was the investigating officer in the case — Receipt of the copy of the letter admitted by the investigating officer — *Held, it was for the investigating officer to show when it had been dispatched — Evidence Act, 1872, S. 103* (Para 20). *Karuppusamy* v. *State of T.N.*, (2006) 11 SCC 459: (2007) 1 SCC (Cri) 515.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 29-9-2006]

— Role of — Held, it is the community that acts through the State and prosecuting agencies *See* CONSTITUTION OF INDIA — 'Article 21' — Fair and open trial, Arts. 21 and 14, (2006) 3 SCC 374

28. SENTENCE

Synopsis

(a) Generally
(b) Adequacy of sentence
(c) Death sentence
(d) Fine
(e) Life sentence
(f) Minimum statutory sentence
(g) Mitigating circumstances or factors
(h) Proportionality
(i) Reduction of sentence
(j) Sentence not reduced

(a) Generally

[387] — Determination of proper sentence — Relevant factors — *Criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct — Punishment ought always to fit the crime — Due consideration should be given to facts and circumstances of each case for deciding just and appropriate sentence to be awarded for an offence — Aggravating and mitigating factors and*

circumstances in which a crime has been committed should be delicately balanced in a dispassionate manner by the court — In the absence of any foolproof formula which may assess various circumstances of the gravity of crime, the discretionary judgment in the facts of each case is the only way in which such judgment may be equitably distinguished

The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. The judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread. (Para 11)

Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilised societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequenc s. (Para 12)

After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the court. No formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of the gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished. (Para 13). *Siddarama* v. *State of Karnataka*, (2006) 10 SCC 673: (2007) 1 SCC (Cri) 72: AIR 2006 SC 3265: 2006 Cri LJ 4622.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 15-9-2006]

[388] — Imposition of "appropriate sentence" — Emphasising need of, object of law as well as duty and role of courts in this regard, stated — Awarding inadequate sentence — Effect of, on justice system and society, explained — Relevant considerations while determining sentence — *Held, sentence should be proportionate to gravity of crime — Corrective machinery or deterrent approach to be adopted depending upon factual matrix — No formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment — Due consideration should be given to facts and circumstances of case, having regard to various factors including nature of offence and manner in which it was executed or committed, motive for the crime, conduct of accused, nature of weapons used and all other attendant circumstances — Aggravating and mitigating circumstances should be delicately balanced — Rights not only of criminals but also of victims of crime and society at large to be kept in view — Criminal Procedure Code, 1973, Ss. 28 & 29*

The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. In operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons

(a) Generally *(contd.)*

used and all other attending circumstances are relevant facts which would enter into the area of consideration. (Para 7)

Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. (Para 8)

The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and widespread. (Para 9)

Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilised societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction, drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences. (Para 10)

After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task. No formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of the crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished. (Para 11)

The imposition of appropriate punishment is the manner in which the court responds to the society's cry for justice against the criminal. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment. (Para 12)

It is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal". If for extremely heinous crime of murder perpetrated in a very brutal manner without any provocation, most deterrent punishment is not given, the case of deterrent punishment will lose its relevance. (Para 13). *Shailesh Jasvantbhai* v. *State of Gujarat*, (2006) 2 SCC 359: (2006) 1 SCC (Cri) 499: 2006 Cri LJ 1132.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 19-1-2006]

[389] — Sentencing system should be corrective or deterrent — Sentencing process should be stern where it should be and tempered with mercy where it warrants to be — *Area of consideration should include facts and given circumstances in each case, nature of crime, manner of its planning and commission, motive, conduct of the accused and all other relevant circumstances — Duty of court — Held, court should award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed — Object of sentence — To*

protect the society and to deter the criminal — On facts, held, reduction of custodial sentence to five years would be appropriate — However, fine in respect of each appellant enhanced to Rs 20,000 with a default custodial sentence of two years — Penal Code, 1860, Ss. 143, 147, 341, 307, 326 and 149

The present appeal has been filed by Accused 1, 2, 6 and 9 calling in question the legality of judgment rendered by Division Bench of the High Court holding Appellant 1 guilty of offence punishable under S. 326 read with S. 149 IPC and sentencing each of the appellant accused to undergo rigorous imprisonment for 8 years and to pay a fine of Rs 500.

In the facts of the case, PW 7, the injured, has gone to his father-in-law's place to bring back his child left there by his wife. While returning to his village along with his child, when he came near the railway station he was attacked by the accused who were armed with choppers. Accused 1 and 2 gave a blow on his right hand with the chopper on account of which he sustained an injury and lost one of his fingers. He left his child who was snatched by Accused 11. Then all of the accused together caught hold of him and dragged him a little distance to nearby hedges and assaulted him by which his left leg was severely crushed and he sustained injuries due to the assault on his right leg and other parts of the body also. As PW 3 and PW 4 attempted to go near the accused to rescue him, they were threatened by the accused who then left the place and ran away. PW 7 was grievously injured and his left leg could not be saved which had to be amputated in view of the gangrene that had set in.

By the impugned judgment the High Court while maintaining the conviction and sentence imposed in respect of the offence relatable to Sections 143, 147 and 341 read with Section 149 IPC and the consequential sentence, altered the conviction in terms of Section 307 read with Section 149 IPC to Section 326 read with Section 149 IPC and the sentence of 8 years' rigorous imprisonment and a fine of Rs 500 was thought to be appropriate. But the High Court did not interfere with the acquittal of the accused persons as done by the trial court.

Dismissing the appeal while modifying the sentence,

Held :

Law regulates social interests, arbitrates conflicting claims and demands. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, and all other attending circumstances are relevant facts which would enter into the area of consideration. (Para 9)

Undue sympathy to impose inadequate sentence would do more harm to the justice system, to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. (Para 10)

The object should be to protect the society and to deter the criminal in achieving the avowed object to law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. (Para 14)

The offence committed is certainly gruesome but the State has not questioned alteration of conviction from Section 307 read with Section 149 IPC to Section 326 read with Section 149 IPC. Considering the background facts it would be appropriate to reduce the custodial sentence to five years but enhance the fine in respect of each appellant to Rs 20,000. In case the fine amount is not deposited within two months, the default custodial sentence would be two years. (Paras 17 and 18). *Siddarama* v. *State of Karnataka*, (2006) 10 SCC 673: (2007) 1 SCC (Cri) 72: AIR 2006 SC 3265: 2006 Cri LJ 4622.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 15-9-2006]

Sevaka Perumal v. State of T.N., (1991) 3 SCC 471: 1991 SCC (Cri) 724: AIR 1991 SC 1463, relied on

(b) Adequacy of sentence

[390] — Discretion as to adequacy of sentence — *Where minimum and maximum sentences are prescribed by statute, both are imposable and it is for court to decide what would be the adequate sentence in the facts and circumstances of the particular case* (Paras 11 and 15). *Bhupinder Singh* v. *Jarnail Singh*, (2006) 6 SCC 277: (2006) 3 SCC (Cri) 101: AIR 2006 SC 2622: (2006) 4 KLT 460.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 13-7-2006]

(c) Death sentence

— Question relating to imposition of — Determination of — Necessity of drawing up balance sheet of aggravating and mitigating circumstances *See* PENAL CODE, 1860 — 'Section 302 — Murder Trial' — Sentence — Death Sentence, Ss. 302 and 307, (2006) 2 SCC 243

(d) Fine

— Exemplary fine — Propriety *See* PENAL CODE, 1860 — 'Section 302 — Murder Trial' — Sentence, S. 302, (2006) 10 SCC 197

[391] — **While confirming the conviction under S. 307 IPC, High Court reducing the sentence of custodial life imprisonment to 2 years but increasing the quantum of fine from Rs 5000 to Rs 30,000 to be paid to the complainant with default stipulation of RI for four years** — *Supreme Court while retaining the custodial sentence reducing the fine to Rs 15,000 with default stipulation of 1½ years' imprisonment — An amount of Rs 10,000 directed to be paid to the complainant out of the amount realised* (Paras 2 and 12). *Bipin Bihari* v. *State of M.P.*, (2006) 8 SCC 799: (2007) 1 SCC (Cri) 25.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 20-9-2006]

(e) Life sentence

— Plea as to imposition of, raised in case under S. 376(2)(f) IPC — Rejection of *See* PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Sentence, S. 376(2)(f), (2006) 3 SCC 771

(f) Minimum statutory sentence

[392] — **Award of — Interference with, by Supreme Court by grant of special leave under Art. 136 — Impermissibility** — *Special leave granted on quantum of sentence when minimum punishment prescribed under law awarded — Propriety — Held, though leave was granted on quantum of sentence but in view of the fact that the court has awarded minimum punishment prescribed under law, it would not be possible to give any relief to appellants — Appeal dismissed. Sham Singh* v. *State of Punjab*, (2006) 5 SCC 512: (2006) 2 SCC (Cri) 488.

Bench Strength **3**. Coram: *B.N. Agrawal, A.K. Mathur* and *Dalveer Bhandari*, JJ. [Date of decision: 23-2-2006]

— Need for adherence to statutorily prescribed minimum *See also* PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Sentence, S. 376, (2006) 9 SCC 590; (2006) 9 SCC 573; Ss. 376(1) & (2) provisos, (2006) 6 SCC 1; S. 376(1) proviso, (2006) 9 SCC 589

(g) Mitigating circumstances or factors

— Long time gap between date of incident and final disposal by Supreme Court *See* ELECTRICITY — 'Theft of electricity', (2006) 8 SCC 629

— Old age *See* PENAL CODE, 1860, S. 304-B, (2005) 13 SCC 455

(h) Proportionality

— Application of principle of — Deterrent theory — Duty of courts *See* 'Sentence' — Generally, (2006) 2 SCC 359

— Duty of court to impose proper sentence commensurate with gravity of offence — Rape case — Relevant factors to be taken into account in *See* PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Sentence, S. 376, (2006) 3 SCC 771

(i) Reduction of sentence

See PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Sentence, S. 376/S. 354, (2006) 9 SCC 762

— Compromise in non-compoundable offence — Consideration of *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 320 and 354, (2006) 9 SCC 255

— Deprecation of *See* PENAL CODE, 1860, Ss. 366, 368 and 376, (2006) 10 SCC 300

[393] — **Fine — Quantum of** — *Fine of Rs 15,000 imposed by the High Court found to be excessive by the Supreme Court and the same reduced to Rs 1000 with default stipulation* (Para 14). *Panakanti Sampath Rao* v. *State of A.P.*, (2006) 9 SCC 658: (2006) 3 SCC (Cri) 355.

Bench Strength **2**. Coram: *Dr. Ar. Lakshmanan* and *Lokeshwar Singh Panta*, JJ. [Date of decision: 18-5-2006]

[394] — **Health and old age as factors — Alteration of sentence to period already undergone i.e. 70 days — Relief of — Entitlement to — Forgery case** — *Girl **B** securing admission on basis of forged marksheets — Sentence of 3 months and 6 months passed against **B** and her father **F** respectively by High Court — **B**, a housewife, having no job/source of income of her own — She was a heart patient and had undergone two open heart surgeries — **F**, a retired Engineer of 81 years, was also a heart patient and having no income other than his pension — Incident occurred a quarter of century back — Considering peculiar facts of the case and an earlier order of Supreme Court, held, sentence could be reduced to period already undergone by **B** and **F** i.e. 70 days — However, fine imposed by courts below would remain unaltered — Criminal Procedure Code, 1973, Ss. 28 and 29 — Penal Code, 1860, Ss. 420, 421, 466, 468, 471, 465 & 120-B* (Paras 7, 8 and 10). *Beena Philipose* v. *State of Kerala*, (2006) 7 SCC 414: (2006) 3 SCC (Cri) 288.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 4-9-2006]

— Leniency in sentence — Prayer made for, in relation to offence under Prevention of Corruption Act, 1988, rejected *See* PREVENTION OF CORRUPTION ACT, 1988, S. 7 and S. 13(1)(d) r/w S. 13(2), (2006) 8 SCC 693

— Offer to compensate heirs of deceased, old incident and serious ailment of accused — Consideration of *See* CONSTITUTION OF INDIA — 'Article 136' — Scope of

Interference — Interference in criminal matters — Sentence, Art. 136, (2005) 13 SCC 386

— Rape case — Reduction of sentence from life imprisonment to 10 years *See* PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Sentence, S. 376(2)(f), (2006) 3 SCC 771

[395] — Reduction of sentence — Need for reasons — *High Court while upholding convictions, reducing various sentences under S. 304 Pt. II, S. 452 and S. 323 r/w S. 34 IPC of six years' RI to period already undergone, of 89 days, without giving any reasons therefor — Unsustainability — Order of High Court set aside — Penal Code, 1860, S. 304 Pt. II. State of U.P.* v. *Narain*, (2006) 6 SCC 8: (2006) 3 SCC (Cri) 8.

Bench Strength **3**. Coram: *Y.K. Sabharwal, C.J.* and *C.K. Thakker* and *R.V. Raveendran*, JJ. [Date of decision: 27-3-2006]

[396] — Reduction of sentence to period already undergone, by High Court — Propriety — Relevant aspects — Non-consideration of — *Offences under Ss. 307, 324 and 114 IPC — Accused also involved in nine other cases — During pendency of trial, bail granted to one of the accused was cancelled for breach of conditions imposed by the court for grant of bail — These aspects not considered by High Court while reducing sentence — High Court proceeded on factually erroneous premises without keeping in view the correct principles relating to punishment — In view of the above, held, High Court's judgment not sustainable — Matter remitted to High Court for a fresh hearing on question of sentence — Penal Code, 1860, Ss. 307, 324 and 114 — Criminal Procedure Code, 1973, Ss. 28 and 29* (Paras 14 and 15). *Shailesh Jasvantbhai* v. *State of Gujarat*, (2006) 2 SCC 359: (2006) 1 SCC (Cri) 499: 2006 Cri LJ 1132.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 19-1-2006]

(j) Sentence not reduced

[397] — Rape of a minor student by the teacher — Submission that having regard to the passage of time and the fact that the appellant himself has a family to maintain, and also that the prosecutrix had since got married, the sentence imposed upon the appellant may be reduced — *Held, it is not the usual case where such considerations may weigh with the Court — Appellant was a school teacher on whom rests the responsibility of building the character of students — If a teacher is himself found guilty of such a heinous offence, no mitigating circumstance can be pleaded to reduce the sentence — Prayer rejected — Crimes against women and children — Rape of minors* (Paras 10 and 11). *Dildar Singh* v. *State of Punjab*, (2006) 10 SCC 531: (2007) 1 SCC (Cri) 129: AIR 2006 SC 3084: 2006 Cri LJ 3914.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 20-7-2006]

29. SITE PLAN

[398] — Responsibility for preparing — *Held, the same is not prepared at the instance of the witnesses but is done as a part of the investigation — Further, on facts held, when the IO during investigation had noticed that there were two independent eyewitnesses he was duty-bound to show the places wherefrom they had witnessed the occurrence in the site plan prepared by him and also record their statements under S. 161 CrPC, despite their names not having been disclosed in the FIR — Investigation — Lapses or omissions on the part of the IO*

Appellants were alleged to have assaulted the deceased with lathi and bhala (spear) resulting in his death. Trial court acquitted them, inter alia, holding that (*i*) Testimony of PW 2 (minor) who was an eyewitness, seemed doubtful, since in his statement under Section 161 CrPC he had not mentioned about the mound wherefrom he had allegedly witnessed the occurrence and even the site plans prepared by PW 7 (IO) and the Patwari did not show existence of such mound; (*ii*) *S* and *M* who were considered to be real eyewitnesses and whose statements had been recorded under Section 161 CrPC, were not examined as witnesses in the court; (*iii*) Alleged motive for commission of crime was not established; (*iv*) Evidence regarding seizure of weapons was also unbelievable since no opinion had been rendered by the chemical examiner as regards existence of human blood on the weapons; and (*v*) As seizure witnesses had not been examined, seizure of material objects was not proved.

In appeal, the High Court reversed the judgment of the trial court holding that (*i*) The spot map showed that place of occurrence was by the side of a river. The lands were on slope towards the river and hence any field away from the river would be on higher plain than the fields nearer to the river; (*ii*) Spot map had no evidentiary value. Any statement made in respect of a map alleged to have been prepared on the information supplied by other persons, was inadmissible in evidence, being hearsay. (*iii*) All statements recorded in the map were statements of police and hence inadmissible in evidence under Section 162 CrPC; (*iv*) The names of two eyewitness *S* and *M* mentioned in the spot map were reflected neither from any of the statements recorded by the police, nor in the evidence of other witnesses and nor mentioned in the FIR. Hence, no adverse inference for their non-examination could be drawn; (*v*) IO had failed to explain as to how and in what manner names of *M* and *S* were recorded in the

spot map. Besides he had also not stated at whose instance the map had been prepared; (*vi*) Statements of *S* and *M* though recorded by the IO were not filed in the court; and (*vii*) Once seizure had been proved by the IO, it was not necessary that the same should be proved by other witnesses also. The High Court on the one hand made adverse comments against the conduct of the IO but on the other hand placed strong reliance on his evidence alone for the purpose of believing that recovery of weapons was in accordance with law, and convicting the accused. Hence the present appeal by the appellant-accused.

Allowing the appeal,

Held :

The High Court further committed an error in not drawing an adverse inference for non-examination of *S* and *M*. It was for the prosecution to prove its case. Even if in the first information report their names were not disclosed but if during investigation materials came to the notice of the investigating officer that apart from PW 2 two other witnesses had also witnessed the occurrence, he was duty-bound to show the places wherefrom they had witnessed the occurrence in the site plan prepared by him and also record their statements under Section 161 CrPC. There is no reason as to why adverse inference should not have been drawn for non-filing of the said statements before the Court along with the charge-sheet. (Para 18)

A site plan is not prepared at the instance of the witnesses but is done as a part of the investigation. If a site plan has been prepared and if during investigation it has been brought to the notice of the investigating officer that there were some other witnesses whose evidence would be material for the purposes of proving the prosecution case, there is no reason why evidence of such witnesses should not have been recorded. It is correct that it is the duty of the investigating officer to produce the said statements with the charge-sheet but, if the same had not been done, the benefit thereof must be given to the defence and not to the prosecution. The High Court therefore committed a serious error in this behalf. (Para 18). *Pratap Singh* v. *State of M.P.*, (2005) 13 SCC 624: (2006) 2 SCC (Cri) 284: AIR 2006 SC 514: 2006 Cri LJ 310.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 23-11-2005]

30. TIME OF DEATH

[399] — **On facts, it was extremely difficult to purport the exact time of death of the deceased, more so when no sufficient reason was assigned in the post-mortem report** (Paras 21 to 24). *Ramreddy Rajesh Khanna Reddy* v. *State of A.P.*, (2006) 10 SCC 172: (2006) 3 SCC (Cri) 512: AIR 2006 SC 1656: (2006) 2 Guj LH 271.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 24-3-2006]

31. WITNESSES

Synopsis

(a) Generally
(b) Accomplice or Approver
(c) Child witness
(d) Hostile witness
(e) Inimical witness
(f) Injured witness
(g) Interested or partisan witness
(h) Prosecutrix
(i) Seizure witness
(j) Solitary witness

(a) Generally

See also 'Appreciation of evidence'

[400] — **Primacy of witnesses in administration of criminal justice — Trial vitiated if witnesses incapacitated — Reasons for incapacitation — Witness protection — Need for** — *Broader public and societal interests therein — Role of State in witness protection pointed out — Pressing and urgent need for legislative measures to protect witnesses highlighted — Imperativeness of initiation of "witness protection programmes" along the lines of those adopted in other nations, stressed*

"Witnesses" as Bentham said: are the eyes and ears of justice. Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors, like the witness being not in a position for reasons beyond control to speak the truth in the court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by the courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle the truth and realities from coming out to the surface rendering truth and justice to become ultimate casualties. Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of the State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confi-

dence in the administration of justice, which may ultimately pave way for anarchy, oppression and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution. There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that the ultimate truth is presented before the court and justice triumphs and that the trial is not reduced to a mockery. (Para 40)

The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens it has to ensure that during a trial in the court the witness could safely depose the truth without any fear of being haunted by those against whom he had deposed. If ultimately the truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before the courts mere mock trials as are usually seen in movies. (Para 41)

Every State has a constitutional obligation and duty to protect the life and liberty of its citizens. That is the fundamental requirement for observance of the rule of law. There cannot be any deviation from this requirement because of any extraneous factors like caste, creed, religion, political belief or ideology. Every State is supposed to know these fundamental requirements. (Para 41)

Legislative measures to emphasise prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair to the needs of the society. On the contrary, efforts should be to ensure fair trial where the accused and the prosecution both get a fair deal. (Para 42). *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367: (2006) 2 KLT 350: 2006 Cri LJ 1694.

Bench Strength **2**. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 8-3-2006]

[**Ed.**: See also *Shortnote Y* in *Zahira (1) case*, (2004) 4 SCC 158.]

(b) Accomplice or Approver

[401] — Approver — Evidence of, should be viewed with suspicion — *Criminal Procedure Code, 1973, S. 306 — Evidence Act, 1872, Ss. 133 & 114 Ill. (b)* (Para 31). *Renuka Bai* v. *State of Maharashtra*, (2006) 7 SCC 442: (2006) 3 SCC (Cri) 290: AIR 2006 SC 3056.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *G.P. Mathur*, JJ. [Date of decision: 31-8-2006]

(c) Child witness

[402] — Need for corroboration — When arises — *Though corroboration of minor's evidence with other independent evidence in all situations is not mandatory, but, held on facts, evidence of PW 2 (minor) required a closer scrutiny as he had contradicted himself on material particulars*

Although it cannot be laid down as a law that in all situations evidence of a minor must be corroborated by other independent evidence, but in the instant case the evidence of PW 2 required a closer scrutiny. He contradicted himself on material particulars. He did not make any statement before the police that he had seen the occurrence from a mound. Existence of the mound was very vital in the sense that if his statement before the Court to the effect that the deceased, at the time of his assault, remained sitting, a question might have arisen that he was not in a position to witness the entire occurrence in detail from a distance of 105 feet from where he was collecting fodder. Furthermore, if upon noticing the appellants proceeding towards the deceased with barchhi and lathi in their hands he started running towards the place of occurrence, it is difficult to understand as to how he could climb upon a mound and see the entire occurrence. If he was in a position to see the entire occurrence either from the place where he was cutting the grass or while running towards the place of occurrence, there was absolutely no reason as to why he should climb upon a mound to see the occurrence. Furthermore, he stated that when the appellants saw him, they started running towards him and then he ran towards the village. (Para 15)

Moreover, according to PW 1, PW 2 went directly to him and narrated the incident, while according to PW 4, PW 2 went to him first and he informed PW 1 about the alleged occurrence. It is one thing to say that PW 1 (informant) heard the story directly from PW 2 while it is another to say that he heard the story from PW 4 who in turn was told about the incident in question by PW 2. Hence, conclusion by trial court that PW 2 might be a tutored witness not illegal. (Paras 16 and 17). *Pratap Singh* v. *State of M.P.*, (2005) 13 SCC 624: (2006) 2 SCC (Cri) 284: AIR 2006 SC 514: 2006 Cri LJ 310.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 23-11-2005]

(d) Hostile witness

— Appearing as defence witness — Propriety *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 233(3) and 311, (2006) 9 SCC 549

[403] — **Evidence of — Credibility** — *Held, evidence of such witness cannot be treated as effaced or washed off the record altogether — It can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof* (Para 7). *Radha Mohan Singh* v. *State of U.P.*, (2006) 2 SCC 450: (2006) 1 SCC (Cri) 661: AIR 2006 SC 951: (2006) 2 All LJ 242: 2006 Cri LJ 1121.

Bench Strength **3**. Coram: *K.G. Balakrishnan, Arun Kumar* and **G.P. Mathur**, JJ. [Date of decision: 20-1-2006]

[404] — **Evidence of hostile witness — When not to be rejected** — *Eyewitness supported prosecution case consistently — About one year after their examination, cross-examination and discharge, they were recalled and re-examined by defence — All of them then turned hostile and resiled from their previous statements — Even on re-examination they consistently supported prosecution story with regard to the date, place and genesis of the incident and they resiled from their previous statements only with regard to identity of accused — However, evidence on record showing that accused and prosecution parties were at loggerheads and were known to each other from before — An eyewitness had already filed application before trial Magistrate that he had been threatened and intimidated by the accused not to depose against them — Held, by the time the eyewitnesses were recalled, they were won over either by money, by muscle power, by threats or intimidation — Testimony of these eyewitnesses cannot be rejected on ground that they had turned hostile* (Para 9). *Nisar Khan* v. *State of Uttaranchal*, (2006) 9 SCC 386: (2006) 2 SCC (Cri) 568.

Bench Strength **2**. Coram: **H.K. Sema** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 25-1-2006]

[405] — **Finding of guilt challenged on ground of witnesses turning hostile — Effect** — *Finding of guilt recorded by the Sessions Court and confirmed by the High Court challenged mainly on ground that the panch witnesses, the injured witness and the complainant had turned hostile*

As regard PWs 3 and 4 panch witnesses turning hostile both the courts held that their statements did not materially affect the prosecution story. Though they denied recovery in their presence, but admitted their signatures on the exhibits. Therefore, the courts correctly held that the recovery was effected in their presence. (Para 7)

Further, submission by appellants that PW 2 (injured witness) had stated that accused were not the persons who attacked him, and therefore they were entitled to benefit of doubt, was rightly rejected by courts below. PW 2 had stated that he had gone to the bank to deposit the amount when he was attacked by 4-5 persons who gave him knife-blows and snatched the bag from him. This statement was well corroborated by the injuries suffered by him on his person, which was proved by PW 5, as well as seizure of the bag along with the money. (Para 9). *Surender Singh* v. *State of Haryana*, (2006) 9 SCC 247: (2006) 2 SCC (Cri) 444.

Bench Strength **2**. Coram: **H.K. Sema** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 17-1-2006]

[406] — **Hostile witness' evidence cannot be treated as effaced from the record and can be relied upon in part** (Para 5). *Santosh Kumar* v. *State of M.P.*, (2006) 10 SCC 595: (2007) 1 SCC (Cri) 28: AIR 2006 SC 3098: 2006 Cri LJ 4594.

Bench Strength **2**. Coram: **G.P. Mathur** and *R.V. Raveendran*, JJ. [Date of decision: 25-8-2006]

[407] — **When defence cannot derive benefit from witness having turned hostile — Inference of threat from accused having regard to common course of social conduct/mores** — *Wife of the deceased, a young woman of 25 years, having five small children and who was an eyewitness to the incident involving the death of her husband, turning hostile — After the incident she residing in another village with her father — She denying suggestion that accused must have threatened her with dire consequences in case she deposed against them — Held, the defence cannot get any advantage of her admission (denial) — Said wife definitely tried to conceal the truth, probably because of fear of the accused — In a normal Hindu family it is unthinkable that the daughter-in-law would desert the in-laws' house with five of her minor children after the death of her husband and would live with her parents, unless driven by compelling circumstances to do so — Evidence Act, 1872, S. 114 — Common course of social conduct/mores — Inference/presumption from* (Paras 14 and 15). *Jagdish Narain* v. *Krishna*, (2005) 13 SCC 255: (2006) 2 SCC (Cri) 168: AIR 2005 SC 4341: 2005 All LJ 3639: 2005 Cri LJ 4513.

Bench Strength **2**. Coram: **H.K. Sema** and *G.P. Mathur*, JJ. [Date of decision: 4-10-2005]

(e) Inimical witness

— Evidence of — Credibility *See* 'Witnesses' — Interested or partisan witness, below, (2006) 11 SCC 444

(f) Injured witness

[408] — **Relevance and efficacy of testimony of** — *Held, testimony of an injured witness has its own relevancy and efficacy — Fact that the witness was injured*

at the time and in the same occurrence lends support to the testimony that the witness was present during the occurrence and he saw the happening with his own eyes (Para 9). *Surender Singh* v. *State of Haryana*, (2006) 9 SCC 247: (2006) 2 SCC (Cri) 444.

Bench Strength **2**. Coram: **H.K. Sema** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 17-1-2006]

— Reliance on testimony of, despite minor discrepancies *See* 'Appreciation of evidence' — Contradictions, inconsistencies, exaggerations or embellishments, above, (2006) 10 SCC 313

(g) Interested or partisan witness

See 'Witnesses' — Related witness, below, (2006) 4 SCC 512

[409] — Acceptability of evidence of — *Murder trial — Eyewitness close relations of deceased and as such interested witnesses — Their evidence cannot be rejected merely on that ground*

Two eyewitnesses (father and uncle of the deceased) supported the prosecution case disclosed in the first information report in all material particulars. Their evidence was quite consistent, natural and both the witnesses stood the test of lengthy cross-examination by the defence.

Held :

The High Court was not justified in disbelieving them on the sole ground that they were interested persons. It is well settled that in a murder trial, merely because a witness is interested or inimical, his evidence cannot be discarded unless the same is otherwise found to be not trustworthy. In the present case, the evidence of these two witnesses is credible more so when one of them received injuries. (Para 10). *State of J&K* v. *S. Mohan Singh*, (2006) 9 SCC 272: (2006) 2 SCC (Cri) 484: AIR 2006 SC 1410: 2006 Cri LJ 1691.

Bench Strength **2**. Coram: **B.N. Agrawal** and *A.K. Mathur*, JJ. [Date of decision: 9-3-2006]

[410] — Credibility of evidence of related witness — *Merely because witnesses were related to deceased, they cannot be said to be interested witnesses and on that ground alone their testimony cannot be rejected — In view of the reluctance of the general public to be a witness, a close relative is the only natural witness, and the only requirement is that testimony of such a witness should be examined cautiously by court — Words and phrases — "Interested witness"*

Testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relation of the deceased is an interested witness. A close relative who is a very natural witness cannot be termed as an interested witness. The term interested postulates that the person concerned must have some direct interest in seeing the accused person being convicted somehow or the other either because of animosity or some other reasons. On the contrary, invariably the public is reluctant to appear and depose before the court especially in criminal case because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are a harassed lot. They are being threatened, intimidated and at the top of all they are subjected to lengthy cross-examination. In such a situation, the only natural witness available to the prosecution would be the relative witness. The relative witness is not necessarily an interested witness. On the other hand, being a close relation to the deceased they will try to prosecute the real culprit by stating the truth. There is no reason as to why a close relative will implicate and depose falsely against somebody and screen the real culprit to escape unpunished. The only requirement is that the testimony of the relative witnesses should be examined cautiously. (Paras 6 and 7). *State of A.P.* v. *S. Rayappa*, (2006) 4 SCC 512: (2006) 2 SCC (Cri) 353: 2006 Cri LJ 1616.

Bench Strength **2**. Coram: **H.K. Sema** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 14-2-2006]

[411] — Credibility of testimony of related witness— *Held, mere fact of relationship itself is not sufficient to discredit their evidence* (Para 5). *Gonchi Rajashekhar Reddy* v. *State of A.P.*, (2006) 9 SCC 535: (2006) 3 SCC (Cri) 332: 2006 Cri LJ 2378.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *Arun Kumar*, JJ. [Date of decision: 3-4-2006]

[412] — Interested or partisan or closely related witness — Evidence of — Acceptability — Careful approach by court — Requirement of — *Held, evidence of such a witness can be acted upon if on careful and cautious scrutiny it is found to be reliable and probable — Where the witness has a motive to falsely implicate the accused, his testimony should be corroborated in material particulars before its acceptance — On facts, evidence of PWs 1 and 2 found reliable — Hence, could not be rejected, even though they were closely related to the deceased and inimically disposed towards the accused — Evidence Act, 1872, S. 3*

Evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or closely related to the deceased, if it is otherwise found to be trustworthy and credible. It only requires scrutiny with more care and caution, so that neither the guilty escape nor the innocent wrongly convicted. If on such careful scrutiny, the evidence is found to be reliable and probable, it can be acted upon. If it is found to be improbable or suspicious, it ought to be rejected. Where the witness has a motive to falsely implicate the accused, his testimony should have

(g) Interested or partisan witness *(contd.)*

corroboration in regard to material particulars before it is accepted. (Para 16)

In this case the trial court had rejected the evidence of PW 1 and PW 2 merely because they were interested witnesses being the brother and father of the deceased. Nothing had been elicited in the cross-examination of PW 1 and PW 2 to discredit their evidence. Their evidence finds corroboration in complaint and the evidence of the doctors and the MOs seized on the disclosures made by A-1 and A-3. Therefore, the High Court rightly held that the evidence of PWs 1 and 2 could not be rejected, even though they were closely related to the deceased and inimically disposed towards the accused. (Para 16). *Pulicherla Nagaraju* v. *State of A.P.*, (2006) 11 SCC 444: (2007) 1 SCC (Cri) 500: AIR 2006 SC 3010: 2006 Cri LJ 3899.

Bench Strength **2**. Coram: *G.P. Mathur* and **R.V. Raveendran**, JJ. [Date of decision: 18-8-2006]

Hari Obula Reddy v. State of A.P., (1981) 3 SCC 675: 1981 SCC (Cri) 795; Ashok Kumar Pandey v. State of Delhi, (2002) 4 SCC 76: 2002 SCC (Cri) 728; Bijoy Singh v. State of Bihar, (2002) 9 SCC 147: 2003 SCC (Cri) 1093, relied on

— Evidence of related witness — Credibility *See* 'Witnesses' — Interested or partisan witness, above, (2006) 11 SCC 444

[413] — Official witnesses — Conviction can be based on testimony of, if found trustworthy

The courts below analysed in detail the factual position and came to hold as to why it was not possible for the prosecution to examine any independent witness. There is no prohibition on a conviction being recorded on the basis of the testimony of official witnesses if they are found to be trustworthy. (Para 9). *Khalek Sk.* v. *State of W.B.*, (2006) 7 SCC 439: (2006) 3 SCC (Cri) 538.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 31-8-2006]

[414] — Testimony of interested or partisan witness — Credibility — Mere relationship does not affect credibility — *Foundation has to be laid for plea of false implication*

Relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible. (Paras 12 to 14)

On facts, held, the ground that the witness being a close relative and consequently being a partisan witness should not be relied upon has no substance. (Para 15). *S. Sudershan Reddy* v. *State of A.P.*, (2006) 10 SCC 163: (2006) 3 SCC (Cri) 503: AIR 2006 SC 2716: 2006 Cri LJ 4033.

Bench Strength **2**. Coram: **Arijit Pasayat** and *R.V. Raveendran*, JJ. [Date of decision: 20-7-2006]

[415] — Witnesses not only related to deceased but also related to accused — Effect on their testimony — *Nothing to show that they were inimical to accused or bore any grudge against accused — Their testimony cannot be discarded merely because of their relationship with deceased*

The appellants came with the other accused persons with deadly weapons at midnight. The active role played by both the appellants herein, clearly stands proved by the evidence of the prosecution witnesses. Not only at the dead of night PW 1 and other witnesses were attacked, Accused 1 and 2 also went inside the house of the deceased and prevented the deceased from escaping from further assault. Whoever had come to the scene of occurrence and tried to intervene, had suffered injuries at the hands of one or the other accused persons. PW 3 and PW 10, it is true, were related to the deceased, but, they were also related to Accused 1 and 2, as admittedly, both the families are related to each other. It is not the case of the appellants or for that matter Accused 1 and 2 that PW 3 and PW 10 were inimical to them. There is nothing on record to show that they bore any grudge towards them. It is in the aforementioned fact situation, the role played by the appellants herein must be considered. They did not make any attempt to stop Appellants 1 and 2 from continuing assault on the family members of PW 2. They had not only watched as to how PW 2 son of the deceased, the deceased himself, PW 4 wife of the deceased and the two daughters i.e. PWs 5 and 6 suffered injuries after injuries at the hands of Accused 1 and 3, but even when PW 3 came to intervene, a grievous injury was caused by appellant A-4 and when thereafter PW 10, a lady intervened, she also had sustained injuries on her hands. It is immaterial, in the aforementioned fact situation obtaining herein that PW 10 suffered simple injury, in view of the fact that whoever had come to interfere had been dealt with one way or the other by the accused persons. (Paras 30 to 33). *Munivel* v. *State of T.N.*, (2006) 9 SCC 394: (2006) 2 SCC (Cri) 581: AIR 2006 SC 1761: 2006 Cri LJ 2133: (2006) 2 KLT 682.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-4-2006]

(h) Prosecutrix

— Conviction on the basis of sole testimony of *See* PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Conviction on sole testimony of prosecutrix, Ss. 375, 376 and 366, (2006) 1 SCC 283, (2005) 13 SCC 766

(i) Seizure witness

[416] — Non-examination of — Effect — Seizure proved only by the IO — *Held, High Court erred in placing strong reliance on IO's evidence for holding the recovery to be proved, while commenting adversely on his conduct*

Non-examination of the seizure witnesses also, in the peculiar facts and circumstances of the case, was of some significance. The learned Sessions Judge made comments about the non-examination of the seizure witnesses only for the purpose of showing that the investigation in the matter might have been partisan in nature at the hands of PW 7 (IO). The High Court on the one hand made adverse comments against the conduct of the investigating officer but on the other hand placed strong reliance on his evidence alone for the purposes of believing that several material objects including the weapons of offence viz. lathi and barchhi were recovered in accordance with law. (Para 18). *Pratap Singh* v. *State of M.P.*, (2005) 13 SCC 624: (2006) 2 SCC (Cri) 284: AIR 2006 SC 514: 2006 Cri LJ 310.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 23-11-2005]

(j) Solitary witness

[417] — Testimony of — Reliability — Merely because a person was the solitary witness who claimed to have seen the occurrence, that cannot be a ground to discard his evidence — *No particular number of witnesses are required for the proof of any fact — Material evidence and not number of witnesses has to be taken note of by the courts to ascertain the truth of the allegations made — On facts held, evidence of PW 1, who was the solitary witness supporting the prosecution suffered from material discrepancies inasmuch as even the place of occurrence was not established — High Court was not right in lightly brushing aside the apparent inconsistencies and discrepancies by making a general observation that he was an illiterate person — Impugned judgment of the High Court which found evidence of PW 1 sufficient to fasten guilt on the accused, hence, unsustainable — Evidence Act, 1872, S. 134* (Paras 10, 11 and 12). *Syed Ibrahim* v. *State of A.P.*, (2006) 10 SCC 601: (2007) 1 SCC (Cri) 34: AIR 2006 SC 2908: 2006 Cri LJ 4087.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 27-7-2006]

[418] — Testimony of a solitary witness — Held, can be the basis of conviction but while doing so the court must be satisfied that his testimony is of such sterling quality that the court finds it safe to base a conviction solely on that — *Credibility of the witness is to be tested by reference to the quality of his evidence which must be free of any blemish or suspicion, must impress the court as wholly truthful, must appear to be natural and so convincing that the court has no hesitation in recording a conviction solely on that basis — On facts held, evidence of PW 1 (mother of the deceased and an alleged eyewitness) fell short of that quality because (i) she invented a false story about existence of motive; (ii) narration of events as they took place before actual murder also found untrue; (iii) considerable doubt as to whether the FIR was recorded on her saying at 8/8.30 a.m.; and (iv) her evidence creating suspicion as regards her being an eyewitness — Hence, in absence of any reliable corroboration of her testimony, appellants entitled to benefit of doubt — Penal Code, 1860, Ss. 302/34* (Paras 24, 25 and 26). *Bhimapa Chandappa Hosamani* v. *State of Karnataka*, (2006) 11 SCC 323: (2007) 1 SCC (Cri) 456.

Bench Strength **2**. Coram: **B.P. Singh** and *Altamas Kabir*, JJ. [Date of decision: 20-9-2006]

32. WOUNDS AND WEAPONS

[419] — Air gun shot fired on chest causing death — Forensic evidence in respect of — Admissibility — *Air gun received by Forensic Science Deptt. in two parts viz. wooden part and iron part separately — Contention that evidence of the expert should not be relied on, held, cannot be accepted when for the purpose of carrying out tests in the forensic laboratory, the iron part of the gun was material — Further, non-recovery of pellets from the body of deceased, held, not material when doctor who conducted post-mortem examination categorically stated that the foreign body seen through x-ray could not be recovered despite the great effort made in this regard during post-mortem and that the penetrating injury was in the vital organ of the chest part — Furthermore, when possession of the air gun with the accused-appellant and recovery thereof at the instance of the accused proved, held, ownership of the air gun not necessary to be proved — Medical Jurisprudence — Ballistics* (Paras 17 to 21). *Sivakumar* v. *State*, (2006) 1 SCC 714: (2006) 1 SCC (Cri) 470: AIR 2006 SC 653: 2006 Cri LJ 536.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 8-12-2005]

[420] — Contention that injury in question could not have been caused with the weapon of offence — Sustainability — *Rejected by Supreme Court as neither the said plea raised before the courts below nor had the doctor been confronted with such a plea* (Para 79). *Triloki Nath* v. *State of U.P.*, (2005) 13 SCC 323: (2006) 2 SCC (Cri) 178: AIR 2006 SC 321: 2005 All LJ 3757.

Bench Strength **2**. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 28-10-2005]

— Incised wounds — Held, wounds produced by blunt weapons, may in certain circumstances simulate appearances of an incised wound *See* 'Appreciation of evidence' — Contradictions, inconsistencies, exaggerations or embellishments, above, (2006) 11 SCC 420

CRIMINOLOGY

[421] — Crimes — Nature of — *Held, crimes are public wrongs, in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to society in general*

The concept of fair trial entails familiar triangulation of interests to the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interest of society is not to be treated completely with disdain and as persona non grata. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Public interest in the proper administration of justice must be given as much importance if not more, as the interest of the individual accused. In this courts have a vital role to play. Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to the society in general. (Paras 35, 36 and 42). *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367: (2006) 2 KLT 350: 2006 Cri LJ 1694.

Bench Strength **2**. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 8-3-2006]

[**Ed.**: *See also* Shortnotes I and J in *Zahira (1) case*, (2004) 4 SCC 158.]

— Gang rape — Prosecution of a woman for *See* PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Prosecution of a woman for rape, Ss. 375, 376(2)(g) & Expln. I, 34 and 110, (2006) 6 SCC 263

DEATH SENTENCE

See CRIMINAL TRIAL — 'Sentence'

DELAY IN CONSIDERATION OF REPRESENTATION

See PREVENTIVE DETENTION — 'Representation to appropriate authority/Govt.'

DELAY IN DISPOSAL OF REPRESENTATION

See PREVENTIVE DETENTION — 'Representation to appropriate authority/Govt.'

DELAY IN EXECUTION OF THE ORDER

See PREVENTIVE DETENTION — 'Detention order'

DELAY IN PASSING DETENTION ORDER

See PREVENTIVE DETENTION — 'Detention order'

DELHI POLICE ACT, 1978 (34 OF 1978)

See POLICE

DELHI SPECIAL POLICE ESTABLISHMENT ACT, 1946 (25 OF 1946)

See POLICE

DETENTION ORDER

See PREVENTIVE DETENTION

DETENU ALREADY IN JAIL OR CUSTODY

See PREVENTIVE DETENTION — 'Detention order'

DNA TEST

See also CRIMINAL TRIAL — 'DNA Test'

See also MEDICAL JURISPRUDENCE

DOCUMENTS AND MATERIALS TO BE SUPPLIED TO DETENU

See PREVENTIVE DETENTION — 'Communication of grounds of detention'

DOCUMENTS AND MATERIALS WHICH NEED NOT BE SUPPLIED

See PREVENTIVE DETENTION — 'Communication of grounds of detention'

DOWRY

See CRIMES AGAINST WOMEN AND CHILDREN

See also SOCIAL EVILS AND MALPRACTICES

DOWRY DEATH

See CRIMES AGAINST WOMEN AND CHILDREN

DYING DECLARATION

See PENAL CODE, 1860 — 'Section 302 — Murder Trial'

EDUCATION

— Age — Proof of *See* EVIDENCE ACT, 1872, S. 35, (2006) 5 SCC 584

ELECTRICITY

Synopsis

1. Consumer's Rights
2. Electricity Act, 1910
3. Electricity Act, 2003
4. Prosecution
5. Theft of Electricity

1. CONSUMER'S RIGHTS

[422] — Surprise raid by State Electricity Board — Right of consumer to be given 48 hours' notice prior to said raid — *Held, in case of surprise raid 48 hours' notice is not envisaged by legislature — Even otherwise also it would be counterproductive, because there is strong possibility of obliterating and/or destroying the entire evidence to connect the accused with the crime — Electricity Act, 1910, S. 20 — Electricity Act, 2003, S. 163*

The appellants had also alleged that 48 hours' notice was not given to them before conducting the raid. The trial court had dealt with this aspect. In a case of a surprise raid 48 hours' notice to the appellants is not envisaged by the legislature and otherwise also it would have been counterproductive, because there was a strong possibility of obliterating and/or destroying the entire evidence to connect the appellants with the crime. (Paras 22 and 23). *Jagmodhan Mehatabsing Gujaral* v. *State of Maharashtra*, (2006) 8 SCC 629: (2007) 1 SCC (Cri) 10.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 2-11-2006]

2. ELECTRICITY ACT, 1910

— **S. 20** *See* 'Consumer's rights', above, (2006) 8 SCC 629

— **S. 39** *See* 'Theft of electricity', below, (2006) 8 SCC 629

— **Ss. 50, 39 and 44** *See* 'Prosecution', below, (2006) 8 SCC 629

3. ELECTRICITY ACT, 2003

— **Ss. 135 & 138** *See* 'Theft of electricity', below, (2006) 8 SCC 629

— **Ss. 151, 135 & 138** *See* 'Prosecution', below, (2006) 8 SCC 629

— **S. 163** *See* 'Consumer's rights', above, (2006) 8 SCC 629

4. PROSECUTION

[423] — Person authorised to file FIR/Complaint — Tampering with electric connection and meter — Theft of electricity — *Amendment in S. 50 of the Electricity Act, 1910 by Act 31 of 1986 authorising officers of State Electricity Board — Hence, filing of complaint by officer of State Electricity Board who was in charge of raiding party, held, was fully justified — Electricity Act, 1910, Ss. 50, 39 and 44 — Electricity Act, 2003, Ss. 151, 135 & 138*

It was submitted by the appellants that the complainant (Dy. Executive Engineer who was in charge of flying squad/raiding party of the State Electricity Board) was not authorised to file FIR. The trial court considered this argument of the appellants. The trial court correctly mentioned in its judgment that by the amendment in the provisions of Section 50, the words "or a State Electricity Board" have been amended and the officers of the State Electricity Board or a person aggrieved by the theft are authorised by the notification to lodge a complaint. The complainant was fully justified in filing the complaint. There is no merit in the aforesaid argument of the appellants. (Para 19). *Jagmodhan Mehatabsing Gujaral* v. *State of Maharashtra*, (2006) 8 SCC 629: (2007) 1 SCC (Cri) 10.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 2-11-2006]

5. THEFT OF ELECTRICITY

[424] — Conviction for — Sustainability — Tampering with electric connection and meter — *Abstraction of electricity without recording of actual consumption in meter — Entire evidence and documents on record establishing the offence — Fact that decree obtained by State Electricity Board against accused-appellants in civil suit indicated theft of energy for a different amount, was of no consequence — Challenge to raid conducted made on ground that 48 hours' notice was not given to appellants prior to said raid, not sustainable — Inspection of industry of appellants made taking assistance of their watchman and one shift supervisor* ***B*** *— Raid not illegal or otherwise defective — Held, conviction of appellants not liable to be interfered with — Hence, upheld — Electricity Act, 1910, Ss. 39 and 44 — Electricity Act, 2003, Ss. 135 & 138*

Upon receiving information that there was theft of electric energy being committed by the appellants for their industry, *V*, the then Deputy Executive Engineer and in charge of flying squad of the Maharashtra State Electricity Board, along with other staff and two panchas went to the in dustries of the appellants at night for the purpose of inspection and checking. The members of the raid team found that the appellants had done tampering with electric connections and meters. The appellants had cut and removed voltage wire of one phase and current wire of another phase so that actual consumption could not be recorded by the meter. The meter was totally bypassed and it was not recording the electricity which was consumed. The appellants did not pay any amount more than the minimum charges to the Board, whereas the actual consumption of the electricity was much more. The photographs of the actual position seen by the raiding party were taken on the spot. The original seals of HT meter box were cut and seized in a closed packet duly sealed under the signatures of the panchas. Thereafter, a complaint was registered against the appellants at police station. After investigation, charges were framed against the appellants under Sections 39 and 44 of the Electricity Act, 1910. The appellants were found guilty of the said offences. They were directed to suffer three months' rigorous imprisonment. Appellants 1 and 3 were also directed to pay a fine of Rs 40,000 each and Appellant 2 to pay a fine of Rs 20,000 under Section 39 of the aforesaid Act. Aggrieved by the said judgment, the appellants preferred an appeal before the Sessions Court, which was dismissed. Thereafter, the revision petition filed

before the High Court was also dismissed. Hence, the present appeal.

Confirming the conviction, but interfering with the sentence,

Held :

No interference is called for in the impugned judgment so far as conviction of the appellants under Sections 39 and 44 of the Electricity Act, 1910 is concerned. (Para 27)

The appellants submitted that there is manifest error in the impugned judgment as it convicted them on the ground that the theft of electricity was to the extent of an amount of Rs 17,35,453.52, whereas the decree passed in the civil suit in favour of the respondent Maharashtra State Electricity Board was for only Rs 3,07,999.74. On evaluation of the entire evidence and documents on record when the case of theft has been fully proved, then whether the theft of energy was to the extent of Rs 17,35,453.52 or Rs 3,07,999.74 really makes no difference, as there was theft of energy on a large-scale for a long time. The appellants cannot take advantage of the fact that the respondents had not appealed against the said judgment. (Paras 20 and 21)

The appellants had also alleged that 48 hours' notice was not given to them before conducting the raid. The trial court had dealt with this aspect. In a case of a surprise raid 48 hours' notice to the appellants is not envisaged by the legislature and otherwise also it would have been counterproductive, because there was a strong possibility of obliterating and/or destroying the entire evidence to connect the appellants with the crime. Moreover, even if it is so accepted, it is on record that the watchman and one *B* were found present in the premises on behalf of the appellants and that they did assist the raiding team to carry on their work. It is reported by the police that *B* was serving in some glass factory in Pune, but he could not be traced out for the purpose of tendering the evidence before the court. In fact, it was possible for the appellants to bring him in the box, at least as defence witness, to state that he had no concern with the industry of the accused. Moreover, the employment record or muster roll of the industry of the accused was not brought for inspection by the Supreme Court. Suppression of this clearly gives rise to considerable substance in the allegations of the prosecution. By and large this negatives the arguments on behalf of the appellants that the raid is illegal or otherwise defective. (Paras 22 and 23). *Jagmodhan Mehatabsing Gujaral* v. *State of Maharashtra*, (2006) 8 SCC 629: (2007) 1 SCC (Cri) 10.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 2-11-2006]

[425] — Persons guilty of, how to be dealt with — Steps to curb the said offence — *Held, apart from conviction, court to impose heavy fine — For curbing the said offence, suggestion made that supply of electricity to consumers who are caught abstracting electricity in a clandestine manner on more than one occasion should be discontinued temporarily or permanently — Legislature may incorporate the said suggestion as a form of punishment by amending S. 39 of the Electricity Act, 1910 — Electricity Act, 1910, S. 39 — Electricity Act, 2003, S. 135*

Large-scale theft of electricity is a very alarming problem faced by all the State Electricity Boards in our country, which is causing loss to the State revenue running in hundreds of crores every year. So, after proper adjudication of the cases of all those who are found to be guilty of the offence of committing theft of electricity; apart from the sentence of conviction, the court should invariably impose heavy fine making theft of electricity a wholly non-profitable venture. The most effective step to curb this tendency perhaps could be to discontinue supply of electricity to those consumers temporarily or permanently who have been caught abstracting electricity in a clandestine manner on more than one occasion. The legislature may consider incorporating this suggestion as a form of punishment by amending Section 39 of the Electricity Act, 1910. (Para 29). *Jagmodhan Mehatabsing Gujaral* v. *State of Maharashtra*, (2006) 8 SCC 629: (2007) 1 SCC (Cri) 10.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 2-11-2006]

[426] — Sentence of 3 months' RI — Reduction of, to period already undergone by enhancing amount of fine — Direction made in respect of — *Appellants were first offenders — They had family members and minor dependants — One of the appellants was a lady — Offence took place 17 years ago — Appellants already served out a part of their sentence — Considering the peculiar facts and circumstances, held, instead of sending appellants back to jail to serve out remaining sentence after 17 years, it would be proper to enhance the amount of fine imposed — Hence, for offence under S. 39 of the Electricity Act, 1910, fine enhanced from Rs 40,000 to Rs 3,00,000 in case of Appellants 1 and 3 and from Rs 20,000 to Rs 2,00,000 in case of Appellant 2 — Appellants further sentenced to pay a fine of Rs 5000 each under S. 44 of the said Act — Electricity Act, 1910, Ss. 39 and 44 — Electricity Act, 2003, Ss. 135 and 138* (Paras 30 and 28). *Jagmodhan Mehatabsing Gujaral* v. *State of Maharashtra*, (2006) 8 SCC 629: (2007) 1 SCC (Cri) 10.

Bench Strength 2. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 2-11-2006]

ESSENTIAL COMMODITIES

1. ESSENTIAL COMMODITIES ACT, 1955

[427] — S. 3 — Sale of/business in essential commodity without meeting requirements under relevant Order — *Necessity to establish that sale or business in said commodity was conducted, by evidence — Seeds (Control) Order, 1983, Cl. 3(1) — Business of selling seeds without licence — Necessity to establish that sale or business in seeds was conducted, by evidence*

According to clause 13(3) of the Seeds (Control) Order, 1983, after seizure the Seed Inspector was under an obligation to report the fact of the seizure to a Magistrate, whereupon the provisions of Sections 457 and 458 CrPC, 1973 shall apply to the custody and disposal of such seeds. This was admittedly not done by the Seed Inspector. The established procedure has been flouted, therefore, any conviction based on such prosecution evidence is unsustainable. Further, Appellant 1, the proprietor of the shop, was not there when the inspection was carried out. The Seed Inspector ought not to have carried out the inspection in the absence of Appellant 1. (Paras 18 and 19)

The respondents have failed to show any evidence that the appellants had ever sold seeds in the market or to the public. No purchaser of the seeds was produced. This fact also seriously affects the credibility of the entire prosecution version. (Paras 9 and 20). *S. Chinnasamy* v. *Seed Inspector*, (2006) 11 SCC 486: (2007) 1 SCC (Cri) 528: 2006 Cri LJ 4761.

Bench Strength 2. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

— Ss. 6-A and 6-B — Compliance with procedural safeguards — Necessity of *See* 'Seeds (Control) Order, 1983', cls. 3, 8, 18 and 13, below, (2006) 11 SCC 486

2. SEEDS (CONTROL) ORDER, 1983

[428] — Cls. 3, 8, 18 and 13 — Offences under — Investigation, search, seizure in respect of — *Compliance with procedural safeguards provided under the 1983 Order — Necessity of — Necessity of Seed Inspector to deal with proprietor of the infringing establishment — Essential Commodities Act, 1955, Ss. 6-A and 6-B — Compliance with procedural safeguards — Necessity of*

These criminal appeals emanated from the judgment of the High Court by which the Single Judge upheld the judgment of the Special Judge for violation of clauses 3(1), 8(*a*) and (*b*) and 18(1) of the Seeds (Control) Order, 1983 with reference to Sections 3(2)(*a*), (*h*) and (*i*), punishable under Section 7(1)(*a*)(*ii*) of the Essential Commodities Act, 1955. The offences involved were:

(*1*) seed business had been carried out without obtaining a valid licence;

(*2*) stock/price list not maintained;

(*3*) records not maintained.

It was submitted on behalf of the accused-Appellant 1 owner that he was transacting business only in cement and not in seeds and the seeds of cotton and tomato which were kept in his shop and recovered by the Seed Inspector, were meant for personal use and not for sale to the public. This defence of Appellant 1 was discarded by the courts below because Appellant 1 had failed to produce any document showing the survey number or the extent of land owned by him or his relatives, as claimed. According to the impugned judgment, the defence of Appellant 1 was further falsified by Ext. P-6 bill-book, which revealed the sale of seeds to various customers for a long time.

The Special Judge sentenced the accused-appellants to undergo three months' simple imprisonment and to pay a fine of Rs 1000 each on three counts.

Partly allowing the appeals,

Held :

According to clause 13(3) of the Seeds (Control) Order, 1983, after seizure the Seed Inspector was under an obligation to report the fact of the seizure to a Magistrate, whereupon the provisions of Sections 457 and 458 CrPC, 1973 shall apply to the custody and disposal of such seeds. This was admittedly not done by the Seed Inspector. The established procedure has been flouted, therefore, any conviction based on such prosecution evidence is unsustainable. Further, Appellant 1, the proprietor of the shop, was not there when the inspection was carried out. The Seed Inspector ought not to have carried out the inspection in the absence of Appellant 1. (Paras 18 and 19)

The respondents have failed to show any evidence that the appellants had ever sold seeds in the market or to the public. No purchaser of the seeds was produced. This fact also seriously affects the credibility of the entire prosecution version. (Paras 9 and 20)

On consideration of the totality of the facts and circumstances of this case, particularly in view of the statement by the State that it will have no objection in case while maintaining the conviction, keeping the following factors in view,

(*i*) Appellant 2 was a young boy of 17 years of age at the time of commission of the offence;

(*ii*) a small quantity of seeds was seized; and

(*iii*) this was the first case recorded in the State of Tamil Nadu for violation under the Seeds (Control) Order, 1983,

if the sentence of the appellants is reduced to the period already undergone by them. The fine as imposed by the trial court, if not already paid, would be paid. (Paras 24, 22 and 23). *S. Chinnasamy* v. *Seed Inspector*, (2006) 11 SCC 486: (2007) 1 SCC (Cri) 528: 2006 Cri LJ 4761.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

[**Ed.**: If the conviction was unsustainable (para 18) and further the credibility of the entire prosecution was seriously affected (para 20) was the concession by the State at all necessary?]

— Cl. 3(1) — Business of selling seeds without licence — Necessity to establish that sale or business in seeds was conducted, by evidence *See* 'Essential Commodities Act, 1955', S. 3, above, (2006) 11 SCC 486

EVE TEASING

See CRIMES AGAINST WOMEN AND CHILDREN

EVIDENCE ACT, 1872

— Preamble — Principle of fair trial manifesting in laws of evidence *See* JURISPRUDENCE, (2006) 3 SCC 374

— S. 3 *See* Ss. 4, 3 & 114 Ill. (c)

See also Ss. 114 Ills. (c) & (g), 4, 3 and 101 to 103

See also Ss. 165, 3, 5, 60, 64 and 91

See also CRIMINAL TRIAL — 'Witnesses' — Interested or partisan witness, (2006) 11 SCC 444

— S. 3 — Degree of proof in cases of custodial violence/death or illegal detention *See* CONSTITUTION OF INDIA — 'Article 21' — Custodial death/violence, Arts. 21, 32, 226 and 300, (2006) 3 SCC 178

— S. 4 *See* Ss. 114 Ills. (c) & (g), 4, 3 and 101 to 103

— Ss. 4, 3 & 114 Ill. (c) *See* NEGOTIABLE INSTRUMENTS ACT, 1881, Ss. 118(a) and 138 & 139, (2006) 6 SCC 39

[429] — Ss. 4, 114, 79 to 90-A, 111-A, 112, 113-A, 113-B and 114-A — Presumptions — Meaning and value of — *Held, a presumption is a legal or factual assumption drawn from the existence of certain facts — Presumptions are raised in terms of the Evidence Act — Presumption raised under a statute has only an evidentiary value — Presumption drawn in respect of one fact may be an evidence even for the purpose of drawing presumption under another* (Paras 33, 39 and 40). *M.S. Narayana Menon* v. *State of Kerala*, (2006) 6 SCC 39: (2006) 3 SCC (Cri) 30: (2006) 3 KLT 404: (2006) 5 Mah LJ 676: (2006) 4 MPLJ 97.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 4-7-2006]

— S. 5 *See* Ss. 165, 3, 5, 60, 64 and 91

— S. 6 *See* Ss. 157 and 6

— S. 8 *See* Ss. 27 and 8

— S. 9 — Identity of person to establish parentage — Ordering of DNA tests *See* FAMILY LAW — 'Parentage', (2006) 9 SCC 363

— S. 10 *See* Ss. 101 and 10

— S. 13 *See* Ss. 114 Ill. (g), 134 and 13

— S. 15 *See* Ss. 165, 137 and 15

[430] — S. 21 — "Yadi" — Prepared by PW — *Being a contemporaneous document, held, can be relied upon* (Para 13). *Subhash Maruti Avasare* v. *State of Maharashtra*, (2006) 10 SCC 631: (2007) 1 SCC (Cri) 54.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 19-10-2006]

— S. 24 *See* PENAL CODE, 1860 — 'Section 302 — Murder Trial' — Conviction upheld, S. 302, (2006) 10 SCC 557

[431] — S. 24 — Extra-judicial confession — If voluntarily made, held, can be relied upon to convict the accused — *Confession about causing death of the deceased made by respondent before PW 1, Sarpanch of the village and PWs 2 and 3, Ward Members of the Village Gram Panchayat — PWs 1 and 2 then went to police station and lodged FIR while PW 3 remained with respondent in the house of PW 1 wherefrom police arrested respondent — Testimony of PWs consistent — The discrepancy between the testimony of PWs 1 and 2 was not fatal and did not create any infirmity — Chain of circumstances proved by prosecution pointing to the guilt of respondent — Trial court relying upon the extra-judicial confession found the respondent guilty — Held, High Court erred in recording respondent's acquittal*

The accused had come to the house of PW 1 where PWs 2 and 3 were sitting together and chatting and he had made extra-judicial confession before them voluntarily. PWs 1 and 2 went to the police station and lodged an FIR while PW 3 was with the accused in the house of PW 1. PW 9 arrested the accused from the house of PW 1. PW 9 interrogated him in the presence of administrators PWs 1 and 2. He also found bloodstains on the shirt of the accused which the accused was wearing and seized them. He was also led by the accused in the presence of PWs 1 and 2 to the scene of occurrence. From the place of occurrence in the presence of PWs 1 and 2 he made a seizure and prepared a sketch map. From the place of occurrence the accused led the investigating officer and others where the dead body of the deceased was found. The doctor opined that the deceased appears to have been died of asphyxia due to throttling. The doctor categorically ruled out the suicidal death. In his statement under Section 313 the accused while denying the commission of any offence took the plea that the deceased committed suicide. The trial court also relied upon the evidence of PW 9, the investigating officer corroborated by the evidence of PW 5, the doctor. The respondent was convicted by the trial court under Section 302 IPC. On appeal being preferred by the accused, the High Court recorded the acquittal on the ground that PW 1 and PW 2 before whom the accused made extra-judicial confession are strangers

and there is no reason for the respondent to make the extra-judicial confession before PW 1, PW 2 and PW 3. However, the High Court has not assigned any reason with regard to the alleged contradiction between the statements of PW 1 and PW 2 and the acquittal is not supported at all.

Allowing the State's appeal,

Held :

Extra-judicial confession is admissible if it inspired confidence and made voluntarily. The High Court reasoning that the accused has made a confession statement before a stranger is totally perverse. (Paras 13 and 3)

PWs 1, 2 and 3 were subjected to lengthy cross-examination. Not even a suggestion was put to the witnesses that the confession was tainted and non-voluntary or that it was obtained by coercion, inducement or promise of favour. The accused's specific plea that the deceased had committed suicide as she had no issue was completely belied by the medical evidence. Thus he had taken a false plea which can be taken as an additional link in the chain of circumstances. This was a strong incriminating material apparent against the accused. Another incriminating material was seizure of the shirt with blood which as per FSL report was human blood. (Paras 5, 9 and 12)

It has been pointed out that in the evidence of PWs 1 and 2 there is contradiction that the accused did not state before them that he came seeking protection from them. But this discrepancy cannot be termed as a contradiction which would be fatal to the prosecution case. Every discrepancy in the statement of witness cannot be treated as fatal to the prosecution case. The discrepancy which is not fatal to the prosecution does not create any infirmity. PW 2 was examined almost four years after the incident. Human memories are apt to blur with the passage of time. After lapse of almost four years, it cannot be expected that a witness can depose with mathematical precision. (Para 8)

In the premises aforestated, the High Court has committed a grave error in law as well as in facts in recording the acquittal. Therefore, the High Court order of acquittal is hereby set aside. The order of the trial court recording the conviction of the accused is restored. (Para 13). *State of A.P.* v. *Kanda Gopaludu*, (2005) 13 SCC 116: (2006) 2 SCC (Cri) 121: AIR 2005 SC 3616.

Bench Strength **2**. Coram: **H.K. Sema** and *P.P. Naolekar*, JJ. [Date of decision: 27-9-2005]

[432] — S. 24 — Extra-judicial confession — Nature and value of — *It may or may not be a weak evidence — Each case should be examined on its own facts and circumstances* (Para 44). *Sivakumar* v. *State*, (2006) 1 SCC 714: (2006) 1 SCC (Cri) 470: AIR 2006 SC 653: 2006 Cri LJ 536.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 8-12-2005]

[433] — S. 24 — Extra-judicial confession — When admissible — Recorded by Village Administrative Officer, a Village Headman, held, admissible — *R. 72 of Criminal Rules of Practice and Orders, 1931 of Madras High Court, absolutely prohibiting Village Magistrates from recording any confession or statement of an accused after commencement of police investigation, has become redundant since a Village Headman cannot be treated as a Village Magistrate under CrPC, 1973 — Scope of power and function of Village Headman stated — Criminal Procedure Code, 1973, Ss. 40, 162 and 164 — Criminal Rules of Practice and Orders, 1931 (Madras High Court), R. 72 — Madras Village Police Regulations, 1816 — Regn. 10 — Madras Village Police Regulations, 1821 — Regn. 6 — Criminal Procedure Code, 1898, S. 528(6)*

A Village Administrative Officer may have a power to report an offence committed within the jurisdiction of the police station where he is posted but the same would not make him a person in authority. Even under certain circumstances, Section 40 of the Code of Criminal Procedure enjoins a duty upon every officer employed in connection with the affairs of a village and every person residing in a village to communicate to the nearest Magistrate or to the officer in charge of the nearest police station, whichever is nearer any information which he may possess respecting the matters enumerated therein. Sub-section (2)(*iii*) of Section 40 defines "officers employed in connection with the affairs of a village" to mean a member of the Panchayat of the village and includes the Headman and every officer or other person appointed to perform any function connected with the administration of the village. The Madras High Court in some decisions held that a Village Munsif was a Magistrate within the meaning of the Code of Criminal Procedure whereupon Section 26 of the Evidence Act was amended by adding an explanation that the Magistrate does not include the head of the village discharging magisterial functions in the Presidency of Fort St. George or elsewhere unless such Headman is a Magistrate under the provisions of the Criminal Procedure Code, 1882. The only provision where such a power may be traced to was Section 528(6) of the Criminal Procedure Code, 1898 which provides that the "head of a village under the Madras Village Police Regulations, 1816 or the Madras Village Police Regulations, 1821 is a Magistrate for the purposes of this section". But this provision has not been retained by

the 1973 Code. The 1973 Code was brought about to give effect to the constitutional mandate to separate the judiciary from the executive. The entire control and supervision of the Magistrates in terms of the 1973 Code now vests in the Sessions Judge and the High Court. Transfer of criminal cases is now dealt in Chapter 31 of the 1973 Code. (Paras 30, 25 and 34)

Rule 72 of the Criminal Rules of Practice and Orders, 1931 provides "Village Magistrates are absolutely prohibited from reducing or writing any confession or statement whatever made by an accused person after the police investigation has begun." The said rule has lost all its significance in view of the fact that now under the Code of Criminal Procedure or any other statute or statutory regulations, the Village Headman is not a Village Magistrate. The post of a Village Magistrate since 1973 does not exist. The Village Administrative Officer, it has not been shown, has been conferred with any power of a Magistrate by reason of the provisions of the Code of Criminal Procedure or otherwise. It has also not been shown that he exercises any judicial or quasi-judicial function. Indisputably, he has no role to play in the matter of an investigation in a criminal case. The Village Magistrates evidently, under the new Code of Criminal Procedure, are not empowered to record any confession or statement either in terms of Section 162 or Section 164 of the Code of Criminal Procedure. For all intent and purport, therefore, Rule 72 of the Criminal Rules of Practice has become redundant and nugatory, logical corollary whereof would be that there does not exist any embargo for an accused person to make an extra-judicial confession before a Village Administrative Officer. There is thus no reason as to why such an extra-judicial confession could not be made before a Village Administrative Officer. (Paras 35 to 40)

With a view to exclude the admissibility of the confession made before a person, he must be a police officer. A Village Administrative Officer does not answer the description. While carrying out his duty to inform the police or the Magistrate in terms of Section 40 of the Code, the Village Headman does not act as a public servant removable only by or with the sanction of the local government nor does he act in his capacity as Magistrate. (Para 40)

Therefore, in this case the extra-judicial confession by the appellant before the Village Administrative Officer was not inadmissible and, thus, could be relied upon. (Para 41). *Sivakumar* v. *State*, (2006) 1 SCC 714: (2006) 1 SCC (Cri) 470: AIR 2006 SC 653: 2006 Cri LJ 536.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 8-12-2005]

Pregada Balanagu v. Krosuru Kotayya, AIR 1937 Mad 578: 38 Cri LJ 950; Lakshmanan, Re, (1971) 1 MLJ 242, approved

Raja v. State, (1995) 2 LW (Cri) 513, overruled

[434] — S. 27 — Recovery from common place frequented by public — Effect — *Recovery of arms pursuant to disclosure statement made by accused immediately after arrest — Offending arms recovered from the bank of a river, as pointed by accused, which were concealed under sand and covered by stones — On the recovery memo signatures of all the accused obtained — Held, High Court fell in grave error by disbelieving the recovery memo solely on ground that the place was a common place frequented by the public* (Paras 6 to 8). *Nisar Khan* v. *State of Uttaranchal*, (2006) 9 SCC 386: (2006) 2 SCC (Cri) 568.

Bench Strength **2**. Coram: **H.K. Sema** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 25-1-2006]

[435] — S. 27 — Submission that the statement made by the appellant in presence of police constable that he had a fight with the deceased and that he could show the place where the body was lying was not admissible — *Held, assuming that the inculpatory part of the statement may not be admissible in evidence, but that part which led to recovery, is admissible* (Para 12). *Deepak Chandrakant Patil* v. *State of Maharashtra*, (2006) 10 SCC 151: (2006) 3 SCC (Cri) 491: AIR 2006 SC 1708.

Bench Strength **2**. Coram: **B.P. Singh** and *Altamas Kabir*, JJ. [Date of decision: 8-3-2006]

[436] — Ss. 27 and 8 — Applicability — *Accused-appellant led IO to riverside and pointed out the place where he had thrown away the khukri and the khukri was recovered from the river with the help of a diver — However, trial court and High Court eschewed this circumstance from consideration on ground that no information was recorded by the IO so as to attract S. 27 of the Evidence Act — Held, evidence regarding pointing the place where khukri was thrown and its recovery, can be looked into to throw light on the conduct of accused under S. 8* (Para 5). *Ghanashyam Das* v. *State of Assam*, (2005) 13 SCC 387: (2006) 2 SCC (Cri) 331.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *D.M. Dharmadhikari*, JJ. [Date of decision: 27-7-2005]

[437] — Ss. 27 and 29 — Extra-judicial confession — *Held on facts, it was wholly unlikely that the accused would make extra-judicial confession to a person whom they never knew*

The deceased was a businessman from Delhi who supplied saris and other garments to the shopkeepers in Chandigarh. He on or about 18-9-1999 came to Chandigarh to collect his dues and after doing so had left for the bus stand to board the bus for Delhi. However, when he failed to reach Delhi, his brother, on

19-9-1999 at about 11.30 a.m. by a telephone call inquired about his whereabouts from PW 16, who was one of the shopkeepers with whom the deceased did business. When the deceased could not be traced DDR No. 23 was registered at 7.20 p.m. on 19-9-1999 at his instance. A wireless message was received in the morning of 20-9-1999 by the SHO of the police station that a dead body had been found lying in a ditch and his articles scattered nearby. The dead body was identified to be that of the deceased and FIR accordingly lodged.

The appellant rickshaw-pullers were charged for committing the murder. It was alleged that the appellants had approached PW 11, a social worker, and made extra-judicial confessions to him. While they were being taken to the police station by PW 11, the police party was said to have met and they were arrested. It was further alleged that they made confessions while in police custody and pursuant thereto two rickshaws were recovered.

Relying on evidence of PW 19 who was running a "rehri" in the bus stand, where the deceased was alleged to have taken his meals and PW 24 who was a tea vendor and who had last seen the deceased in the company of the accused the appellants were found guilty of offence under Ss. 302/34 IPC and sentenced to life imprisonment. An appeal preferred thereagainst by the appellants was dismissed by the High Court. Hence the present appeal.

Allowing the appeals,

Held :

It is now well settled by a catena of decisions that for proving the guilt of commission of an offence under Section 302 IPC, the prosecution must lead evidence to connect all links in a chain so as to clearly point the guilt of the accused alone and nobody else. (Para 21)

According to the prosecution, another person was involved whose name never figured during investigation. He was never arrested and was alleged to have run away with the entire belongings of the deceased. (Para 22)

There were glaring discrepancies as regards the date and time of recovery of the dead body. The evidence of PW 19 and PW 24 who had allegedly last seen the deceased in the company of one of the appellants was found not at all trustworthy. It is difficult to believe the statement of PW 24 that the deceased would come to his shop for having tea along with all the appellants. A businessman would not ordinarily go to a small tea shop to take his tea. It would be absurd to suggest that he would go to a shop to take tea with all the appellants together, who are all rickshaw-pullers. He was a resident of Delhi. There was hardly any likelihood that he would personally know the appellants. Even if it be assumed that he had been moving from place to place in a rickshaw, the prosecution should have brought some evidence to show that he had hired the rickshaw of either *R* or any other appellant. No charge of conspiracy in terms of Section 120-B had also been framed against them. (Paras 23 and 24)

Further, evidence of PW 11, to whom the accused were alleged to have made extra-judicial confessions also not inspiring confidence. It was really surprising that even though the appellants had allegedly confessed their guilt, they would willingly be accompanying PW 11 to the police station and also meeting the investigating officer on the way. There was no reason for PW 11 to know that PW 25 was the IO of the case. It is also significant to note that as to what statements were made by the appellants by way of extra-judicial confessions had not been disclosed. It is wholly unlikely that all the three appellants would make a joint statement. PW 11 did not disclose as to whether any of the appellants made the statements before him or all of them gave statements one after the other. (Para 16)

It is wholly unlikely that the accused would make extra-judicial confession to a person whom they never knew. It also appears to be wholly improbable that unknown persons would come to seek his help unless he was known to be close to the police officers. His statements, thus, do not even otherwise inspire confidence. (Para 17)

Moreover, according to the appellants, they formed common intention to murder only after seeing the bag. If the prosecution case is to be believed, the deceased must be carrying the bag from the very beginning. There was thus no question of noticing the said bag by the appellants soon before the occurrence for the first time. If they had formed common intention to commit a crime, the same must be for committing robbery by relieving the deceased of the bag. Who had strangulated the deceased is not known. (Para 15)

If there was any common intention to commit any crime, evidently the same was to loot the valuables belonging to the deceased. Curiously enough, the appellants had not been charged under Section 397 IPC. No recovery was made from them. In the absence of having been charged under Section 397 IPC, it is difficult to hold the appellants guilty of commission of murder, inasmuch as it has not been proved as to who amongst the appellants or actually the fourth person had strangulated the deceased. In the absence of any evidence that all of them were present at the time when the deceased was strangulated, a charge under

Sections 302/34 could not have been brought home. Even PW 19 in his evidence, did not say that the deceased was *last seen* in the company of the appellants. According to him, he had merely seen the deceased taking dinner at about 9.30 p.m. On that day he had seen appellant *R* but had not seen the deceased leaving for the bus stand in *R*'s rickshaw. Presence of other appellants was also not disclosed by him. How he could identify the deceased or any other passenger who had taken meals at his rehri, is not known. It is thus difficult to rely on his statements. He could remember and identify the deceased from the photograph, which was appearing in the driving licence, is difficult to accept. (Para 19)

Hence, considering the evidence adduced conviction and sentence passed against the appellants cannot be sustained. (Para 25). *Sunny Kapoor* v. *State (UT of Chandigarh)*, (2006) 10 SCC 182: (2006) 3 SCC (Cri) 522: AIR 2006 SC 2242: 2006 Cri LJ 2920.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-5-2006]

— **S. 29** *See* Ss. 27 and 29

— **S. 30** *See* CRIMINAL PROCEDURE CODE, 1973, S. 164, (2006) 1 SCC 697

[438] — S. 32 — Dying declaration — Apparent mistake — Effect — Held, the same is inconsequential if explained — *Prosecution case against two accused while dying declaration mentioning three names — Apparently one name split into two by a comma — Dying declaration hence not assailable* (Para 12)

It was apparent from the dying declaration that the Magistrate had committed a mistake in splitting the name of the appellant by putting a comma between 'Ravi' and 'Kumar'. But on that basis it cannot be argued that while the charge was only against the appellant, the dying declaration contained names of more than one person and therefore, it cannot be relied upon. (Para 12). *Ravikumar* v. *State of T.N.*, (2006) 9 SCC 240: (2006) 2 SCC (Cri) 554: AIR 2006 SC 1448: 2006 Cri LJ 1625.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.P. Naolekar**, JJ. [Date of decision: 22-2-2006]

[439] — S. 32 — Dying declaration — Authority to record — Multiple dying declarations — Second dying declaration recorded by a senior clerk in the government department authorised by the Tahsildar — Submission that law does not permit so — *Held, no law mandates that dying declaration has to be recorded only by a Magistrate — Further held, more sanctity is definitely attached to a dying declaration recorded by a Magistrate since the recording of dying declaration by a Magistrate assures the court that the statement has been correctly understood and truthfully recorded by an impartial person — In the instant case, the three dying declarations were consistent and hence no weight to be attached to the fact that the second one was not recorded by the Executive Magistrate* (Para 6). *Rajendra* v. *State of Maharashtra*, (2006) 10 SCC 759: (2007) 1 SCC (Cri) 158.

Bench Strength **2**. Coram: **B.P. Singh** and *Altamas Kabir*, JJ. [Date of decision: 27-7-2006]

[440] — S. 32 — Dying declaration — Contradiction with accident register — Effect — *Held, the same is not fatal when explained away and in the face of two dying declarations*

There is also no substance in the contention that when the deceased was admitted in the hospital the doctor has written in the accident register that she has lit fire on herself which indicates that it was a case of suicide and not homicide. In the factual scenario it appears that the doctor had made enquiries from the deceased's father, who had come to the hospital along with the deceased, and as the cause of injuries was not informed to him, he by himself put the entry in the accident register that the deceased lit fire on herself and when the correct picture emerged he erased the entry. The entry made in the accident register has been explained by the doctor in his statement. On the basis of this entry, the defence version of suicide cannot be accepted on the face of the two dying declarations of the deceased recorded by the Magistrate and the Head Constable on the basis of which the FIR was registered. The evidence of the Magistrate and the doctor is absolutely clear and unambiguous. (Para 13). *Ravikumar* v. *State of T.N.*, (2006) 9 SCC 240: (2006) 2 SCC (Cri) 554: AIR 2006 SC 1448: 2006 Cri LJ 1625.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.P. Naolekar**, JJ. [Date of decision: 22-2-2006]

[441] — S. 32 — Dying declaration — Conviction, on the basis of — Requirement of — *Deceased stating in her dying declaration that the accused poured kerosene on her person and set her on fire — Doctor opining that the deceased at the time of declaration was fully conscious and was in a position to give the statement recorded by the Magistrate — He also acknowledging his endorsement on the dying declaration — His testimony remaining unimpeached in cross-examination — Other evidence also supporting the prosecution case — Held, reasons recorded by the Division Bench while affirming the conviction of appellant under S. 302 Penal Code and sentence of RI passed by the Sessions Judge, are cogent and convincing and hence, call for no interference — Crimes against women and children — Bride burning* (Paras 3 and 4). *Ashok Laxman Gaikwad* v. *State of*

Maharashtra, (2006) 9 SCC 587: (2006) 3 SCC (Cri) 347: AIR 2006 SC 1773: 2006 Cri LJ 2145.

Bench Strength **2**. Coram: *Dr. Ar. Lakshmanan* and *D.K. Jain*, JJ. [Date of decision: 19-4-2006]

[442] — S. 32 — Dying declaration — Conviction when can be based on — Principle underlying — *Held, conviction can be based solely upon dying declaration provided it is voluntary and not tutored, prompted or product of imagination — Court should seek medical opinion so as to be satisfied that deceased was in fit mental condition to make the statement and that he had opportunity to identify the accused — Dying declaration corroborated by evidence of PWs, held on facts, reliable and conviction could be based thereon — Although statement made by deceased in Telugu was recorded by Magistrate, as translated by doctor of the hospital into Tamil, but since the statement so recorded was read over and explained by the doctor to deceased who admitted the same to be correct and the Magistrate made an endorsement to that effect, the dying declaration cannot be said to be unreliable — Penal Code, 1860, S. 302*

The deceased, her brother PW 3 and brother's wife PW 2 were residing in a rented house. On the day of occurrence, when PW 2 was returning from market, she saw the accused-appellant running away from her residence and the deceased coming out of the house in flames. The flames were extinguished with the help of neighbours. The deceased narrated the incident to PW 2 that the appellant committed house trespass with the intention to outrage her modesty and when she resisted, the appellant poured kerosene over her and set her on fire. The deceased was taken to hospital where on receipt of the doctor's certificate that the deceased was conscious, a Head Constable of Police recorded her statement. The statement so recorded was received at police station and a case was registered under S. 376 r/w Ss. 511 and 307 IPC. Thereafter, a Judicial Magistrate came to the hospital to record her dying declaration. As the deceased did not know Tamil language the doctor who knew Telugu and Tamil translated the questions put by the Magistrate in Tamil into Telugu and the answers given in Telugu were translated into Tamil. The statement so recorded was read over and explained by the doctor to the deceased and she admitted the same to be true and correct. The endorsement to that effect was made by the Magistrate. The case of the prosecution is primarily based upon the dying declaration of the deceased which found corroboration by the statement of PW 2. The trial court convicted the appellant under S. 302 IPC and sentenced him to life imprisonment and also imposed fine of Rs 1000 and in default sentenced three months RI. The trial court also convicted him under Section 449 IPC and sentenced him to 10 years' imprisonment and imposed fine of Rs 1000 and in default 3 months RI. The High Court confirmed the conviction and sentence. It was contended on behalf of the appellant that the dying declaration was not free from suspicion as the deceased mentioned the presence of three accused whereas only two accused have been alleged to have committed the offence. It was further urged that the Magistrate did not know Telugu and the dying declaration recorded by him on the basis of the translation made by PW 9 (the doctor) cannot be relied upon for convicting the accused, particularly so when the doctor, at the time of admission of the deceased in the hospital, recorded in the accident register that the deceased was admitted as she had immolated herself which was later on struck off.

Dismissing the appeal,

Held :

Section 32 of the Evidence Act, 1872 is an exception to the general rule against hearsay. Sub-section (1) of Section 32 makes the statement of the deceased admissible which is generally described as "dying declaration". The dying declaration essentially means statements made by the person as to the cause of his death or as to the circumstances of the transaction resulting in his death. The admissibility of the dying declaration is based upon the principle that the sense of impending death produces in man's mind the same feeling as that of a conscientious and virtuous man under oath. The dying declaration is admissible upon consideration that the declarant has made it in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to the falsehood is silenced and the mind is induced by the most powerful consideration to speak the truth. Notwithstanding the same, care and caution must be exercised in considering the weight to be given to these species of evidence on account of the existence of many circumstances which may affect their truth. The court has always to be on guard to see that the statement of the deceased was not the result of either tutoring or prompting or a product of imagination. The court has also to see and ensure that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy itself that the deceased was in fit mental condition to make the dying declaration, has to look for the medical opinion. Once the court is satisfied that the declaration was true and voluntary, it undoubtedly, can base its conviction on the dying declaration without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule

requiring corroboration is merely the rule of prudence. (Para 5)

In this case the Magistrate who had recorded the dying declaration of the deceased, on being examined, stated that he had satisfied himself before recording the dying declaration that the deceased was in a position to give the statement. He asked her name, her father's name, etc. and specifically put a question to her whether she would be able to give the declaration and she said "yes". After satisfying that she would be able to give the declaration, he recorded the statement. As the statement recorded by the Magistrate as translated by the doctor, was narrated to the deceased which she admitted, there cannot be any manner of doubt that whatever was stated by the deceased, was correctly recorded by the Magistrate in the dying declaration. There was no cross-examination of the two witnesses by the defence as regards the translation of the statement given in Telugu into Tamil by the doctor and recording the same in Tamil by the Magistrate. There is no reason or material to show that the dying declaration was a product of imagination, tutoring or prompting. On the contrary, the same appears to have been made by the deceased voluntarily, it is trustworthy and has credibility. The dying declaration as recorded was corroborated by the statement of PW 2. (Paras 9, 10, 14 and 11). *Ravikumar* v. *State of T.N.*, (2006) 9 SCC 240: (2006) 2 SCC (Cri) 554: AIR 2006 SC 1448: 2006 Cri LJ 1625.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.P. Naolekar**, JJ. [Date of decision: 22-2-2006]

[443] — S. 32(1) — Dying declaration — Conviction solely based on — Sustainability — *Held, dying declaration if inspiring confidence can be the sole basis for conviction — In the instant case the dying declaration was well corroborated with other attending circumstances inspiring confidence on basis of which conviction could be sustained — High Court committed grave miscarriage of justice by reversing the conviction recorded by the trial court by disbelieving the dying declaration — Impugned order set aside*

The High Court, in the instant case, found the dying declaration unreliable on following grounds: (*i*) that the deceased did not mention about the presence of PW 3 (his son), who was an eyewitness in it; (*ii*) that the doctor did not state that the deceased was in a fit mental condition to give the dying declaration, and throughout remained conscious when his statement was recorded; and (*iii*) considering the nature of injury suffered by the deceased there was excessive haemorrhage and the deceased must have gone in shock within half an hour after the incident and since blood transfusion could not be given, the so-called dying declaration was not reliable.

Allowing the appeal,

Held :

Ground 1:

Presence or non-presence of PW 3 (the son) at the scene of occurrence or for that matter non-mentioning of his name in the dying declaration had no connection with ascertainment of the veracity and creditworthiness of the dying declaration. (Para 10)

Ground 2:

This reasoning of the High Court is fallacious. The doctor himself had recorded the dying declaration and had given fitness certificate stating that the patient was fit for recording the declaration. Even if it is assumed that the doctor's certification was not there, would be no impediment to the creditworthiness of the dying declaration. (Para 17)

Ground 3:

The High Court was grossly oblivious of the statement of the doctor when he said that the deceased must have gone in shock at the place of incident but he recovered consciousness as he was given saline water, glucose and medicines. (Para 12)

The dying declaration was well corroborated with other attending circumstances inspiring confidence, on basis of which conviction could be sustained. The High Court committed grave miscarriage of justice by reversing the conviction recorded by the trial court. Hence impugned order of the High Court set aside. (Para 21). *Heeralal Yadav* v. *State of M.P.*, (2006) 10 SCC 718: (2007) 1 SCC (Cri) 95: AIR 2006 SC 2535: 2006 Cri LJ 3301.

Bench Strength **2**. Coram: **H.K. Sema** and *A.K. Mathur*, JJ. [Date of decision: 4-7-2006]

Balak Ram v. State of U.P., (1975) 3 SCC 219: 1974 SCC (Cri) 837, considered

Paparambaka Rosamma v. State of A.P., (1999) 7 SCC 695: 1999 SCC (Cri) 1361, held overruled

Gokul Singh v. State of M.P., 2000 Cri LJ 1283 (MP), reversed

[444] — S. 32(1) — Dying declaration — Must be wholly reliable — In case of suspicion, court should seek corroboration — *If evidence shows that statement of deceased is not wholly true it can be treated only as a piece of evidence but conviction cannot be based solely upon it*

Conviction can be recorded on the basis of the dying declaration alone but therefor the same must be wholly reliable. In a case where suspicion can be raised as regards the correctness of the dying declaration, the court before convicting an accused on the basis thereof would look for some corroborative evidence. Suspicion is no substitute for proof. If evidence brought on records suggests that such dying declaration does not reveal the entire truth, it may be

considered only as a piece of evidence in which event conviction may not be rested only on the basis thereof. The question as to whether a dying declaration is of impeccable character would depend upon several factors; physical and mental condition of the deceased is one of them. In this case the circumstances which have been brought on records clearly point out that what might have been stated in the dying declaration may not be correct. If the deceased had been nurturing a grudge against her husband for a long time, she while committing suicide herself may try to implicate him so as to make his life miserable. In the present case where the appellant has been charged under Section 302 of the Penal Code, the presumption in terms of Section 113-A of the Evidence Act is not available. In the absence of such a presumption, the conviction and sentence of the accused must be based on cogent and reliable evidence brought on record by the prosecution. In this case, the evidences are not such which point out only to the guilt of the accused. (Para 14). *P. Mani* v. *State of T.N.*, (2006) 3 SCC 161: (2006) 2 SCC (Cri) 36: AIR 2006 SC 1319: 2006 Cri LJ 1629.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 24-2-2006]

[445] — S. 32(1) — Dying declaration — Non-mention of presence of deceased's son at the occurrence — *Held, not fatal if dying declaration is otherwise creditworthy*

Presence or non-presence of PW 3 (the son) at the scene of occurrence or for that matter non-mentioning of his name in the dying declaration had no connection with ascertainment of the veracity and creditworthiness of the dying declaration. (Para 10). *Heeralal Yadav* v. *State of M.P.*, (2006) 10 SCC 718: (2007) 1 SCC (Cri) 95: AIR 2006 SC 2535: 2006 Cri LJ 3301.

Bench Strength **2**. Coram: **H.K. Sema** and *A.K. Mathur*, JJ. [Date of decision: 4-7-2006]

[446] — S. 32(1) — Dying declaration — Oral dying declaration to companion — *PW was with the deceased till they parted company to go to their respective houses and within a few minutes thereafter deceased was attacked with a khukri causing several incised wounds — PW rushed back to the spot and found deceased lying in injured condition — According to PW, deceased after uttering a few words that accused-appellant "cut him", became unconscious — By the time he was taken to hospital he was declared dead — In the FIR lodged without delay, the oral dying declaration was specifically mentioned — Oral dying declaration believed by trial court and High Court — Contention that with the magnitude of injuries the victim had suffered he would not have been in a position to speak, held, rightly rejected by High Court — Possibility of deceased saying a few words before he became unconscious cannot be ruled out especially when there was no cross-examination of medical officer on this aspect — There was no reason why PW would give a false version to implicate the accused — Oral dying declaration, held, reliable* (Paras 4 and 6). *Ghanashyam Das* v. *State of Assam*, (2005) 13 SCC 387: (2006) 2 SCC (Cri) 331.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *D.M. Dharmadhikari*, JJ. [Date of decision: 27-7-2005]

— **S. 34** *See* Ss. 114 Ill. (g) & 34

[447] — S. 35 — Entry as to age — School-leaving certificate produced for proving date of birth of accused — Reliability of — Said certificate not issued in ordinary course of business of school — *Certificate sought to be proved by Headmaster of school who issued it — It was not original but second copy of school-leaving certificate issued after 26 years of the accused leaving school — Headmaster stating that he had no personal knowledge regarding date of birth of accused — He was not in school when accused admitted therein — No admission of Headmaster that the copy given by him was a true copy of the original certificate — No register maintained by school produced — Considering these facts and provisions of S. 35, held, the said school-leaving certificate could not be relied upon — Thus, claim of accused on the basis thereof that he was a child under the relevant Children Act and, therefore, entitled to the benefit of the said Act, not sustainable — U.P. Children Act, 1951 (1 of 1952), S. 2(4) — Juvenile Justice Act, 1986, Ss. 2(h) & 32 — Juvenile Justice (Care and Protection of Children) Act, 2000, Ss. 2(k) & 49 — Education — Age — Proof of*

Unless specifically provided for, in terms of Section 35 of the Evidence Act, the register maintained in the ordinary course of business by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which, inter alia, such register is kept would be a relevant fact. Section 35, thus, requires the following conditions to be fulfilled before a document is held to be admissible thereunder: (*i*) it should be in the nature of the entry in any public or official register; (*ii*) it must state a fact in issue or relevant fact; (*iii*) entry must be made either by a public servant in the discharge of his official duty, or by any person in performance of a duty specially enjoined by the law of the country; and (*iv*) all persons concerned indisputably must have an access thereto. (Para 23)

The Headmaster of the school in his cross-examination categorically stated that the date of birth of the appellant might have been disclosed by the appellant at the time of admission. He did not have any personal

knowledge with regard thereto. No enquiry was made as regards the age of the appellant while he was admitted in the institution. (Para 16)

The school-leaving certificate produced in this case, was not issued in the ordinary course of business of the school. There is nothing on record to show that the date of birth of the appellant was recorded in a register maintained by the school in terms of the requirements of law as contained in Section 35 of the Evidence Act. No statement has further been made by the said Headmaster that either of the parents of the appellant who accompanied him to the school at the time of his admission therein made any statement or submitted any proof in regard thereto. The entries made in the school-leaving certificate, evidently had been prepared for the purpose of the case. (Para 17)

The school-leaving certificate was not an original one. It was merely a second copy. The copy was said to have been signed by the Headmaster on 30-4-1998. A bare perusal of the said certificate would show that the appellant was said to have been admitted on 1-8-1967 and his name was struck off from the roll of the institution on 6-5-1972. The Headmaster has not admitted that the copy given by him was a true copy of the original certificate. (Paras 19 and 17)

It has not been shown as to whether any register was required to be maintained under any statute or whether any register was maintained in the school at all. The original register has not been produced. The authenticity of the said register, if produced, could have been looked into. No person had been examined to prove as to who had made entries in the register. The school-leaving certificate which was not issued by a person who was in the school at the time when the appellant was admitted therein, cannot be relied upon. (Para 35). *Ravinder Singh Gorkhi* v. *State of U.P.*, (2006) 5 SCC 584: (2006) 2 SCC (Cri) 632: AIR 2006 SC 2157: (2006) 4 All LJ 269: 2006 Cri LJ 2791.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 12-5-2006]

[448] — S. 35 — Entry as to age in public record — Application of S. 35 — Determination of date of birth or age of a person — Standard of proof required under S. 35 in civil and criminal cases — Difference between, if any — *Held, in the absence of any other statute operating in the said field, S. 35 will apply — Standard of proof under S. 35 in civil and criminal cases is not different but same — Therefore, until the age of a person is required to be determined in a manner laid down under a statute, different standard of proof should not be adopted in civil and criminal cases — Hence criminal court cannot entertain any evidence brought on record — Juvenile Justice — Juvenile Justice Act, 1986, Ss. 2(h) & 32 — Juvenile Justice (Care and Protection of Children) Act, 2000, Ss. 2(k) & 49 — U.P. Children Act, 1951 (1 of 1952), S. 2(4)*

The age of a person as recorded in the school register or otherwise may be used for various purposes; namely, for obtaining admission; for obtaining an appointment; for contesting election; registration of marriage; obtaining a separate unit under the ceiling laws; and even for the purpose of litigating before a civil forum. Determination of the date of birth of a person before a court of law, whether in a civil proceeding or a criminal proceeding, would depend upon the facts and circumstances of each case. In the absence of any other statute operating in the field, Section 35 of the Evidence Act will have application and the court, while determining such age would depend upon the materials brought on record by the parties which would be admissible in evidence in terms of Section 35 of the Act. (Paras 38, 21 and 25)

Section 35 of the Evidence Act would be attracted both in civil and criminal proceedings. The Evidence Act does not make any distinction between a civil proceeding and a criminal proceeding. Different standards having regard to the provision of Section 35 of the Evidence Act cannot be applied in a civil case or a criminal case. A court of law for the purpose of determining the age of a party to the lis, having regard to the provisions of Section 35 of the Evidence Act, will have to apply the same standard. No different standard can be applied in case of an accused as in a case of abduction or rape, or similar offence where the victim or the prosecutrix although might have consented with the accused, if on the basis of the entries made in the register maintained by the school, a judgment of conviction is recorded, the accused would be deprived of his constitutional right under Article 21 of the Constitution, as in that case the accused may unjustly be convicted. Therefore, until the age of a person is required to be determined in a manner laid down under a statute, different standard of proof should not be adopted. Thus, the contention that while in a civil dispute a strict proof may be necessary, in a criminal case and particularly in the case of a juvenile, the court may consider any evidence which may be brought on record cannot be accepted. (Paras 23, 21, 22, 38, 39 and 22). *Ravinder Singh Gorkhi* v. *State of U.P.*, (2006) 5 SCC 584: (2006) 2 SCC (Cri) 632: AIR 2006 SC 2157: (2006) 4 All LJ 269: 2006 Cri LJ 2791.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 12-5-2006]

[449] — S. 35 — Entry in public record — Date of birth entered in school records — Reliability of — *Held, the said entry is merely a piece of evidence — It should be authentic in nature — Service Law — Age*

— Juvenile Justice — Juvenile Justice Act, 1986, S. 32 — Juvenile Justice (Care and Protection of Children) Act, 2000, S. 49 (Para 37). *Ravinder Singh Gorkhi* v. *State of U.P.*, (2006) 5 SCC 584: (2006) 2 SCC (Cri) 632: AIR 2006 SC 2157: (2006) 4 All LJ 269: 2006 Cri LJ 2791.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 12-5-2006]

[450] — S. 35 — Relevancy of entry in public record/register — Conditions to be fulfilled before a document is held to be admissible under S. 35, restated

Unless specifically provided for, in terms of Section 35 of the Evidence Act, the register maintained in the ordinary course of business by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which, inter alia, such register is kept would be a relevant fact. Section 35, thus, requires the following conditions to be fulfilled before a document is held to be admissible thereunder: (*i*) it should be in the nature of the entry in any public or official register; (*ii*) it must state a fact in issue or relevant fact; (*iii*) entry must be made either by a public servant in the discharge of his official duty, or by any person in performance of a duty specially enjoined by the law of the country; and (*iv*) all persons concerned indisputably must have an access thereto. (Para 23). *Ravinder Singh Gorkhi* v. *State of U.P.*, (2006) 5 SCC 584: (2006) 2 SCC (Cri) 632: AIR 2006 SC 2157: (2006) 4 All LJ 269: 2006 Cri LJ 2791.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 12-5-2006]

[451] — Ss. 40 to 44 — Applicability of — Previous judgments when not relevant — *Judgment of acquittal of co-accused rendered in earlier trial arising out of same transaction, held, was wholly irrelevant in the case of the present accused who was tried separately — The said judgment was not admissible under Ss. 40 to 44 — Case of acquitted co-accused was decided on the basis of evidence led there while the case of the present accused had to be decided only on the basis of evidence adduced during the course of his trial* (Paras 8 and 10). *Rajan Rai* v. *State of Bihar*, (2006) 1 SCC 191: (2006) 1 SCC (Cri) 209: AIR 2006 SC 433: 2006 Cri LJ 163.

Bench Strength **2**. Coram: **B.N. Agrawal** and *A.K. Mathur*, JJ. [Date of decision: 10-11-2005]

Karan Singh v. State of M.P., (1965) 2 SCR 1: AIR 1965 SC 1037: (1965) 2 Cri LJ 142, followed

— **S. 45** *See* CRIMINAL TRIAL — 'Juvenile/Child accused', (2006) 9 SCC 603

[452] — S. 45 — Opinion of experts — Binding effect — *Held, expert medical evidence not binding as against the ocular evidence — Opinion of the Medical Officer is to assist the court as he is not a witness of fact and the evidence given by the Medical Officer is really of an advisory character and not binding on the witness of fact* (Paras 20 and 21). *Vishnu* v. *State of Maharashtra*, (2006) 1 SCC 283: (2006) 1 SCC (Cri) 217: AIR 2006 SC 508: 2006 Cri LJ 303.

Bench Strength **2**. Coram: **H.K. Sema** and *Tarun Chatterjee*, JJ. [Date of decision: 24-11-2005]

Madan Gopal Kakkad v. Naval Dubey, (1992) 3 SCC 204: 1992 SCC (Cri) 598, followed

— **S. 46** *See* Ss. 60 and 46

— **S. 60** *See* Ss. 165, 3, 5, 60, 64 and 91

See also CRIMINAL PROCEDURE CODE, 1973, Ss. 378 and 386, (2005) 13 SCC 624

— Ss. 60 and 46 — Oral evidence and medical evidence — In case of inconsistency between, which one should be relied on — Held, depends on the facts and circumstances of each case *See* CRIMINAL TRIAL — 'Appreciation of evidence' — Contradictions, inconsistencies, exaggerations or embellishments, (2006) 11 SCC 420

[453] — Ss. 61 and 64 — Proof of contents of document — *By mere filing of a document, its contents are not proved — A certificate issued by an expert should be brought on record by examining him* (Para 17). *Subhash Maruti Avasare* v. *State of Maharashtra*, (2006) 10 SCC 631: (2007) 1 SCC (Cri) 54.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 19-10-2006]

— **S. 64** *See* Ss. 61 and 64

See also Ss. 165, 3, 5, 60, 64 and 91

— **S. 79 to 90-A** *See* Ss. 4, 114, 79 to 90-A, 111-A, 112, 113-A, 113-B and 114-A

— **S. 91** *See* Ss. 92 and 91

See also Ss. 165, 3, 5, 60, 64 and 91

[454] — Ss. 92 and 91 — Evidence as to terms of document/instrument — Exclusion of evidence of oral agreement — Bar under S. 92 in relation to — Applicability — Comparison with S. 91 — *Held, S. 92 is applicable only to parties to the instrument and not to strangers to the instrument (which would include the prosecution in a criminal proceeding) — Bar under S. 92 is to oral evidence to disprove the* ***terms*** *of a contract, and not to disprove the contract* ***itself*** *— Hence, bar under S. 92 applies when a party to the instrument, relying on the instrument, seeks to disprove the terms of the instrument — But the said bar does not apply where anyone, including a party to the instrument, seeks to establish that the transaction under the instrument itself is sham or fictitious or nominal, not intended to be acted upon — Hence, the said bar was not applicable to the present criminal proceeding where prosecution was trying to prove that the documents (executed between accused and PWs 11 and 15) were fictitious documents created to offer an explanation for disproportionate wealth*

acquired by accused — Prevention of Corruption Act, 1947, S. 5(1)(e) r/w S. 5(2) — Prevention of Corruption Act, 1988, S. 13(1)(e) r/w S. 13(2)

The accused (appellant) was prosecuted under the Prevention of Corruption Act, 1947 as the value of assets acquired by him was found to be beyond his known sources of income. As regards the explanation for excess income, the accused took the plea in relation to a certain amount (Rs 2,50,000) that he had taken a loan of the said amount from moneylenders PWs 11 and 15. In that regard, the accused relied upon the documentary evidence of promissory notes executed and entries made in account books by the said PWs. But, in court, PWs 11 and 15 gave evidence denying the grant of the said loan and they admitted that the said documents and entries were created only to help the accused to explain the huge amounts of cash found in his possession. The accused contended that the evidence of PWs 11 and 15 was contrary to the documentary evidence and therefore, should be excluded under Section 92 of the Evidence Act, 1872.

Rejecting the said contention,

Held :

Under the Evidence Act, 1872, Section 92 is supplementary to Section 91 and corollary to the rule contained in Section 91. The rule contained in Section 92 will apply only to the parties to the instrument or their successors-in-interest. Strangers to the contract (which would include the prosecution in a criminal proceeding) are not barred from establishing a contemporaneous oral agreement contradicting or varying the terms of the instrument. On the other hand, Section 91 may apply to strangers also. (Para 24)

The bar under Section 92 would apply when a party to the instrument, relying on the instrument, seeks to prove that the terms of the transaction covered by the instrument are different from what is contained in the instrument. It will not apply where anyone, including a party to the instrument, seeks to establish that the transaction itself is different from what it purports to be. To put it differently, the bar is to oral evidence to disprove the terms of a contract, and not to disprove the contract itself, or to prove that the document was not intended to be acted upon and that intention was totally different. Oral evidence can always be led to show that a transaction under a particular document or set of documents is sham or fictitious or nominal, not intended to be acted upon. (Para 24)

Applying the aforesaid principles, it is clear that the bar with Section 92 will apply to a proceeding inter partes to a document and not to a criminal proceeding, where the prosecution is trying to prove that a particular document or set of documents are fictitious documents created to offer an explanation for disproportionate wealth. (Para 24). *R. Janakiraman* v. *State*, (2006) 1 SCC 697: (2006) 1 SCC (Cri) 442: AIR 2006 SC 1106.

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 4-1-2006]

— Ss. 101 and 102 *See* PENAL CODE, 1860, Ss. 96 and 97, (2006) 9 SCC 678

See also LABOUR LAW — 'Departmental/Domestic enquiry' — Enquiry procedure, (2006) 8 SCC 52

— Ss. 101 and 103 *See* PENAL CODE, 1860, Ss. 97, 100, 101, 103 and 104, (2005) 13 SCC 323

See also PREVENTION OF CORRUPTION ACT, 1988, S. 17 second proviso, (2006) 7 SCC 172

— Ss. 101 and 105 *See* PENAL CODE, 1860, Ss. 96 and 97, (2006) 11 SCC 304

— S. 101 to 103 *See also* Ss. 114 Ills. (c) & (g), 4, 3 and 101 to 103

[455] — Ss. 101 to 103 — Onus of proof on accused, held, is not as heavy as that of the prosecution — *Such onus compared with that of a defendant in civil proceeding*

The accused need not disprove the prosecution case in its entirety. Moreover, the onus on an accused is not as heavy as that of the prosecution. It may be compared with that on a defendant in a civil proceeding. (Paras 38 and 45). *M.S. Narayana Menon* v. *State of Kerala*, (2006) 6 SCC 39: (2006) 3 SCC (Cri) 30: (2006) 3 KLT 404: (2006) 5 Mah LJ 676: (2006) 4 MPLJ 97.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 4-7-2006]

— S. 103 *See* CRIMINAL TRIAL — 'Prosecution', (2006) 11 SCC 459

— S. 106 *See* CRIMINAL TRIAL — 'Burden of proof', (2006) 3 SCC 161

See also PENAL CODE, 1860 — 'Section 302 — Murder Trial' — Dowry death, S. 304-B [S. 302], (2006) 10 SCC 681

— S. 106 and Ill. (b) *See* PENAL CODE, 1860 — 'Section 302 — Murder Trial' — Dowry death, S. 304-B [S. 302], (2006) 10 SCC 681

— S. 111-A *See* Ss. 4, 114, 79 to 90-A, 111-A, 112, 113-A, 113-B and 114-A

— S. 112 *See* Ss. 4, 114, 79 to 90-A, 111-A, 112, 113-A, 113-B and 114-A

— S. 113-A *See also* Ss. 4, 114, 79 to 90-A, 111-A, 112, 113-A, 113-B and 114-A

See also PENAL CODE, 1860, Ss. 304-B, 306 and 498-A, (2006) 9 SCC 794; S. 306, (2006) 1 SCC 463

[456] — S. 113-A — Presumption as to abetment of suicide by a married woman — When arises — *In the instant case, where the appellant was charged under S. 302 IPC, presumption in terms of S. 113-A of Evidence Act was not available — In such situation, conviction and sentence of accused must be based on cogent and reliable evidence*

In the present case where the appellant has been charged under Section 302 of the Penal Code, the presumption in terms of Section 113-A of the Evidence Act is not available. In the absence of such a presumption, the conviction and sentence of the accused must be based on cogent and reliable evidence brought on record by the prosecution. In this case, the evidences are not such which point out only to the guilt of the accused. (Para 14). *P. Mani* v. *State of T.N.*, (2006) 3 SCC 161: (2006) 2 SCC (Cri) 36: AIR 2006 SC 1319: 2006 Cri LJ 1629.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 24-2-2006]

— **S. 113-B** *See* Ss. 4, 114, 79 to 90-A, 111-A, 112, 113-A, 113-B and 114-A

See also PENAL CODE, 1860, S. 304-B, (2006) 1 SCC 463

— **S. 113-B — Presumption under** *See* PENAL CODE, 1860, S. 304-B, (2006) 10 SCC 115

— **S. 114** *See* Ss. 4, 114, 79 to 90-A, 111-A, 112, 113-A, 113-B and 114-A

See also NEGOTIABLE INSTRUMENTS ACT, 1881, Ss. 139, 118(a) & 138, (2006) 6 SCC 39

— **S. 114 — "Common course of ... human conduct" — Presumptions as to — Instances** *See* CRIMINAL TRIAL — 'Place of occurrence', (2005) 13 SCC 398

— **S. 114 — "Common course of ... human conduct" — Right of private defence of able bodied man armed with an axe against a woman — If can arise** *See* PENAL CODE, 1860, Ss. 100 and 101, (2005) 13 SCC 360

— **S. 114 — Common course of social conduct/mores — Inference/presumption from** *See* CRIMINAL TRIAL — 'Witnesses' — Hostile witness, (2005) 13 SCC 255

— **S. 114-A** *See* Ss. 4, 114, 79 to 90-A, 111-A, 112, 113-A, 113-B and 114-A

— **S. 114 Ill. (b)** *See* Ss. 133 & 114 Ill. (b)

— **S. 114 Ill. (c)** *See* Ss. 4, 3 & 114 Ill. (c)

— **Ss. 114 Ills. (c) & (g), 4, 3 and 101 to 103** *See* NEGOTIABLE INSTRUMENTS ACT, 1881, Ss. 118(a), 139 & 138, (2006) 6 SCC 39

— **S. 114 Ill. (g)** *See also* Ss. 114 Ills. (c) & (g), 4, 3 and 101 to 103

[457] — S. 114 Ill. (g) — Adverse inference — *IO failing to file statements of two independent eyewitnesses recorded under S. 161 CrPC along with the charge-sheet and also not examining them in the court — Held, for such lapses, adverse inference needs to be drawn*

The High Court further committed an error in not drawing an adverse inference for non-examination of *S* and *M*. It was for the prosecution to prove its case. Even if in the first information report their names were not disclosed but if during investigation materials came to the notice of the investigating officer that apart from PW 2 two other witnesses had also witnessed the occurrence, he was duty-bound to show the places wherefrom they had witnessed the occurrence in the site plan prepared by him and also record their statements under Section 161 CrPC. There is no reason as to why adverse inference should not have been drawn for non-filing of the said statements before the Court along with the charge-sheet. (Para 18)

Non-examination of the seizure witnesses also, in the peculiar facts and circumstances of the case, was of some significance. The learned Sessions Judge made comments about the non-examination of the seizure witnesses only for the purpose of showing that the investigation in the matter might have been partisan in nature at the hands of PW 7 (IO). The High Court on the one hand made adverse comments against the conduct of the investigating officer but on the other hand placed strong reliance on his evidence alone for the purposes of believing that several material objects including the weapons of offence viz. lathi and barchhi were recovered in accordance with law. (Para 18). *Pratap Singh* v. *State of M.P.*, (2005) 13 SCC 624: (2006) 2 SCC (Cri) 284: AIR 2006 SC 514: 2006 Cri LJ 310.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 23-11-2005]

[458] — S. 114 Ill. (g) — Document in possession of a public functionary, who is under a statutory obligation to produce the same before the court of law — His failure to produce it before the court — Effect of — *Held, adverse inference may be drawn against him* (Para 18). *State Inspector of Police* v. *Surya Sankaram Karri*, (2006) 7 SCC 172: (2006) 3 SCC (Cri) 225.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 24-8-2006]

[459] — S. 114 Ill. (g) — Non-production of relevant record by accused for inspection by court — Effect — *Said suppression, held, gave rise to considerable substance in allegations of prosecution* (Para 23)

The employment record or muster roll of the industry of the accused was not brought for inspection by the Supreme Court. Suppression of this clearly gives rise to considerable substance in the allegations of the prosecution. By and large this negatives the arguments on behalf of the appellants that the raid is illegal or otherwise defective. (Paras 22 and 23). *Jagmodhan Mehatabsing Gujaral* v. *State of Maharashtra*, (2006) 8 SCC 629: (2007) 1 SCC (Cri) 10.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 2-11-2006]

[460] — S. 114 Ill. (g) — Submission by accused that despite an application having been filed by the accused, the prosecution had failed to produce

case diary and general diary relating to the date of occurrence — *However, neither any such application, nor order passed thereon by the trial court produced — Held, question of drawing an adverse inference against the prosecution for non-production of the case diary or the general diary would have arisen had the court passed an order being satisfied that the prosecution intended to suppress some facts which were material for the purposes of arriving at the truth or otherwise of the prosecution case — If no such application had been filed and no order thereupon had been passed by the court, the question of drawing any adverse inference against the prosecution would not arise — Criminal Procedure Code, 1973, S. 172* (Para 12). *Ashok Kumar* v. *State of T.N.*, (2006) 10 SCC 157: (2006) 3 SCC (Cri) 497: AIR 2006 SC 2419: 2006 Cri LJ 2931.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-5-2006]

[461] — Ss. 114 Ill. (g) & 34 — Withholding of relevant evidence — Adverse inference — Dishonour of cheque, which was issued to a sharebroker (complainant) — *Allegation of complainant that cheque was issued to clear debt in relation to share transactions — Complainant not producing before court his statutory books of accounts in respect of said transactions — In this view, held, adverse inferences could be drawn against him — Negotiable Instruments Act, 1881, Ss. 138, 118(a) & 139*

The definite case of the second respondent was that the cheque dated 17-8-1992 was issued by the appellant in discharge of his debt. The said liability by way of debt arose in terms of the transactions. Two adverse inferences in the instant case are liable to be drawn against the second respondent i.e. (*i*) he deliberately has not produced his books of accounts, and (*ii*) he had not been maintaining the statutory books of accounts and other registers in terms of the Stock Exchange bye-laws. In *Kundan Lal Rallaram*, AIR 1961 SC 1316 it was held that if a relevant evidence is withheld, the court may draw a presumption to the effect that if the same was produced, it might have gone unfavourable to the plaintiff. Such a presumption was itself held to be sufficient to rebut the presumption arising under Section 118 of the NI Act. (Paras 35, 45 and 44)

The second respondent evidently had not been able to explain the discrepancies in his books of accounts. The evidence adduced by the parties before the trial court lead to one conclusion that the appellant had been able to discharge his initial burden. The burden thereafter shifted to the second respondent to prove his case. He failed to do so. Therefore, the impugned judgment cannot be sustained which is set aside accordingly. (Paras 25, 50 and 55). *M.S. Narayana Menon* v. *State of Kerala*, (2006) 6 SCC 39: (2006) 3 SCC (Cri) 30: (2006) 3 KLT 404: (2006) 5 Mah LJ 676: (2006) 4 MPLJ 97.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 4-7-2006]

— Ss. 114 Ill. (g), 134 and 135 *See* CRIMINAL TRIAL — 'Appreciation of evidence' — Non-examination of witnesses, (2006) 1 SCC 191

— S. 114-A *See* PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — 'Against her will' and 'without her consent', Ss. 375 Secondly & 90 and 376, (2006) 11 SCC 615

— S. 133 *See* PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Generally, S. 376, (2006) 3 SCC 771

— Ss. 133 & 114 Ill. (b) *See* CRIMINAL TRIAL — 'Witnesses' — Accomplice or Approver, (2006) 7 SCC 442

— S. 134 *See* Ss. 114 Ill. (g), 134 and 13

See also CRIMINAL PROCEDURE CODE, 1973, Ss. 374 and 386, (2005) 13 SCC 239

See also CRIMINAL TRIAL — 'Witnesses' — Solitary witness, (2006) 10 SCC 601

— S. 137 *See* Ss. 165, 137 and 15

See also CONSTITUTION OF INDIA — 'Article 136' — Practice and Procedure — Cross-examination, Arts. 136 and 142, (2006) 3 SCC 374

[462] — Ss. 157 and 6 — Former statement of witness may be proved to corroborate later testimony as to same fact — *Testimony of PW 5, who had not witnessed the incident but who on hearing gunshots had rushed to the place of occurrence and seen deceased lying in a badly injured condition and PW 12 had narrated the entire incident and role played by the appellants in killing his brother, held, can be used as a corroborative piece of evidence* (Paras 7, 8 and 9). *Ramashray Yadav* v. *State of Bihar*, (2005) 13 SCC 468: (2006) 2 SCC (Cri) 267: AIR 2006 SC 201: 2006 Cri LJ 133.

Bench Strength **2**. Coram: *H.K. Sema* and **G.P. Mathur**, JJ. [Date of decision: 8-11-2005]

— S. 165 *See* RULE OF LAW, (2006) 3 SCC 374

[463] — Ss. 165, 3, 5, 60, 64 and 91 — Rule of best evidence — Cardinality of following of — *Role of court in ensuring that such evidence is brought on record — Criminal Procedure Code, 1973, Ss. 311 and 391 — Rule of best evidence — Cardinality of — Role of court in ensuring that such evidence is brought on record*

It is a cardinal rule in the law of evidence that the best available evidence should be brought before the court. Sections 60, 64 and 91 of the Evidence Act, 1872 are based on this rule. (Para 28)

Section 311 CrPC, 1973 is manifestly in two parts. Whereas the word used in the first part is "may", the second part uses "shall". In consequence, the first part gives purely discretionary authority to a criminal court and enables it at any stage of an enquiry, trial or

proceeding under the Code of Criminal Procedure (*a*) to summon anyone as a witness, or (*b*) to examine any person present in the court, or (*c*) to recall and re-examine any person whose evidence has already been recorded. On the other hand, the second part is mandatory and compels the court to take any of the aforementioned steps if the new evidence appears to it essential to the just decision of the case. This is a supplementary provision enabling, and in certain circumstances imposing on the court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the court to arrive at the truth by all lawful means and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts. (Para 26)

The court is not empowered under the provisions of the Code of Criminal Procedure to compel either the prosecution or the defence to examine any particular witness or witnesses on their side. This must be left to the parties. But in weighing the evidence, the court can take note of the fact that the best available evidence has not been given, and can draw an adverse inference. The court will often have to depend on intercepted allegations made by the parties, or on inconclusive inference from facts elicited in the evidence. In such cases, the court has to act under the second part of Section 311 CrPC. Sometimes the examination of witnesses as directed by the court may result in what is thought to be "filling of loopholes". That is purely a subsidiary factor and cannot be taken into account. Whether the new evidence is essential or not must of course depend on the facts of each case, and has to be determined by the Presiding Judge. (Para 28)

The object underlying Section 311 CrPC is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The object of Section 311 CrPC is to bring on record evidence not only from the point of view of the accused and the prosecution but also from the point of view of orderly society. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code of Criminal Procedure and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 CrPC the significant expression that occurs is "at any stage of any inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind. (Paras 27 and 29). *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367: (2006) 2 KLT 350: 2006 Cri LJ 1694.

Bench Strength **2**. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 8-3-2006]

— Ss. 165, 137 and 154 *See* CRIMINAL PROCEDURE CODE, 1973, S. 311, (2006) 3 SCC 374

EXCISE

BENGAL EXCISE ACT, 1909 (5 OF 1909)

[464] — Ss. 46-A(a)(i) and (ii) — Applicability — Appellant found in unlawful possession of 40 litres of illicit distilled liquor — As a result Govt. suffered loss of Rs 1400 towards revenue — *Held, S. 46-A(a)(i), applicable — Hence conviction under S. 46-A(a)(ii) and sentence of 3 years' RI and fine of Rs 500 not justified — Having regard to the quantum of illicit liquor seized, five months' RI would be justified*

The courts below have proceeded on the basis as if the offence is covered by Section 46-A(*a*)(*ii*). In this case the offence committed by the accused related to "possession". Clause (*a*) relates to "manufacture". Allegations in this case do not relate to "manufacture". That being so, Section 46-A(*a*)(*ii*) had no application and on the other hand the applicable provision is Section 46-A(*a*)(*i*) of the Act. The conviction is accordingly altered. The sentence which can be imposed for the said offence is maximum two years with fine. Considering the quantum of illicit distillery liquor seized, five months' rigorous imprisonment would meet the ends of justice. (Para 13). *Khalek Sk.* v. *State of W.B.*, (2006) 7 SCC 439: (2006) 3 SCC (Cri) 538.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 31-8-2006]

EXPLOSIVE SUBSTANCES ACT, 1908

— **Ss. 3 and 5** *See* PENAL CODE, 1860, S. 34 [S. 302 r/w S. 34], (2006) 1 SCC 191

EXTERNMENT

See CONSTITUTION OF INDIA — 'Article 21'

FAILURE TO EXPLAIN INJURIES ON ACCUSED

See CRIMINAL TRIAL

FAIR TRIAL

See also CRIMINAL TRIAL

See also CONSTITUTION OF INDIA — 'Article 21'

FALSUS IN UNO FALSUS IN OMNIBUS

See CRIMINAL TRIAL

FAMILY LAW

1. GENERALLY

— **Inter-caste marriages — Validity and desirability of** *See* CONSTITUTION OF INDIA — 'Article 21' — Right to freedom of conscience and expression, Arts. 21, 25, 19(1)(a), 32, 38, 51-A(e) and Preamble, (2006) 5 SCC 475

2. GUARDIANS AND WARDS ACT, 1890

— **S. 9 — Issuance of writ of habeas corpus by Supreme Court to grant custody of child to its natural mother** *See* CONSTITUTION OF INDIA — 'Article 32' — Particular writs — Habeas corpus, Arts. 32 and 226, (2006) 9 SCC 364

3. PARENTAGE

[465] — Identity of person to establish parentage — Ordering of DNA tests — *Constitution of India — Article 136 — Scope of interference — Interference in family matters, Art. 136 — Ordering of DNA tests — Criminal Trial — Identification, Ordering of DNA tests — Evidence Act, 1872, S. 9 — Identity of person to establish parentage — Ordering of DNA tests — Medical Jurisprudence — DNA Test. Nirmaljit Kaur (1)* v. *State of Punjab*, (2006) 9 SCC 363: (2006) 2 SCC (Cri) 541.

Bench Strength **2**. Coram: *Ruma Pal* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 15-7-2005]

FATAL ACCIDENTS ACT, 1855

— **S. 1-A** *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', S. 168, (2006) 3 SCC 242,S. 168 and Sch. II, (2006) 6 SCC 249

FINE

See CRIMINAL TRIAL — 'Sentence'

FOREIGN EXCHANGE REGULATION ACT, 1947

See FOREIGN EXCHANGE REGULATION ACT, 1973, (2006) 4 SCC 278

FOREIGN EXCHANGE REGULATION ACT, 1973

[466] — Object behind enactment of, restated — In view thereof held, any contravention of FERA must be viewed seriously and punished — *Foreign Exchange Regulation Act, 1947 — Constitution of India, Sch. IX, Item 100 & Art. 31-B*

The object of FERA, 1973 is clearly to protect the economic interests of the country and to deal with any violation that causes economic loss to the country. In the context of that object, any contravention of the provisions of the said Act has to be viewed seriously and anyone directly responsible or conniving at the offence is liable to be punished. This appears to be the legislative intent in enacting FERA, 1973 replacing FERA, 1947 and also including it in the Ninth Schedule to the Constitution. (Para 18). *Standard Chartered Bank* v. *Directorate of Enforcement*, (2006) 4 SCC 278: (2006) 2 SCC (Cri) 221: AIR 2006 SC 1301: (2006) 127 DLT 747: (2006) 197 ELT 18.

Bench Strength **3**. Coram: *Y.K. Sabharwal, C.J.* and *C.K. Thakker* and **P.K. Balasubramanyan**, JJ. [Date of decision: 24-2-2006]

[467] — Challenge to provisions of, on ground of violation of fundamental rights (Arts. 14 and 21 in this case) — Sustainability of — Mode of interpretation of provisions of the said Act — *Held, FERA being included in Sch. IX to the Constitution, none of its provisions can be challenged as violative of any of the rights conferred by Pt. III of the Constitution — Thus, provisions of FERA are immune from the said challenge and there is no need to read down those provisions — Said provisions to be given a natural interpretation and, if necessary, a purposive interpretation, keeping in view the object sought to be achieved by FERA*

In view of the immunity from challenge enjoyed by the provisions of the Act, there arises no necessity to read down the provisions of the Act so as to ensure that they do not violate the rights conferred by Article 14 of the Constitution. The provisions therefore call for a natural interpretation and, if necessary, a purposive interpretation, keeping in view the object sought to be achieved by the Act. In the guise of interpretation, there is no occasion to whittle down the ambit of the provisions to save them from the charge of arbitrariness, hit by Article 14 of the Constitution. (Para 9). *Standard Chartered Bank* v. *Directorate of Enforcement*, (2006) 4 SCC 278: (2006) 2 SCC (Cri) 221: AIR 2006 SC 1301: (2006) 127 DLT 747: (2006) 197 ELT 18.

Bench Strength **3**. Coram: *Y.K. Sabharwal, C.J.* and *C.K. Thakker* and **P.K. Balasubramanyan**, JJ. [Date of decision: 24-2-2006]

— **S. 50** *See also* Ss. 68, 50, 51 and 56

[468] — Ss. 50, 51, 52 and 54 — Notices for initiation of adjudication proceedings — Writ of prohibition against — Maintainability — *Held, the said writ restraining the authority under FERA from*

proceeding further with the adjudication could not be issued — Person to whom notices sent could put forward his objections/defences before the adjudicating authority — He also has right of appeal under Ss. 52 and 54

As regards notices in respect of the adjudication under Section 50 of the FERA, it is for the appellants to put forward their objections thereto before the authority concerned and it is for that authority to decide the relevant aspects while deciding to impose or not to impose any penalty on the appellants. The appellants have a right of appeal under Section 52 of the FERA to the Appellate Board and a further right of appeal to the High Court under Section 54 of the FERA. There is no justification for the issue of a writ of prohibition restraining the authority under the FERA from proceeding further with the adjudication. It is for the appellants to put forward their defences, if any available, before the adjudicating authority and pursue it in accordance with law. (Para 15). *Standard Chartered Bank* v. *Directorate of Enforcement*, (2006) 4 SCC 278: (2006) 2 SCC (Cri) 221: AIR 2006 SC 1301: (2006) 127 DLT 747: (2006) 197 ELT 18.

Bench Strength **3**. Coram: *Y.K. Sabharwal, C.J.* and *C.K. Thakker* and **P.K. Balasubramanyan**, JJ. [Date of decision: 24-2-2006]

[469] — Ss. 50, 51, 56 and 68 — Constitutional validity of — *Challenge to, on ground of violation of Arts. 14 and 21 — Held, was not sustainable — Because FERA has been included in Sch. IX to the Constitution and, therefore, none of its provisions can be challenged as violative of any of the rights conferred by Pt. III of the Constitution*

FERA has been included in the Ninth Schedule to the Constitution, as Item 100. Therefore, in terms of Article 31-B of the Constitution, none of the provisions of the FERA can be deemed to be void or ever to have become void on the ground that the FERA or any of the provisions thereof, are inconsistent with or take away or abridge any of the rights conferred by Part III of the Constitution. Obviously, the rights conferred by Articles 14 and 21 of the Constitution are rights flowing from Part III of the Constitution and, therefore, it is clear that no challenge based on violation of Article 14 or 21, even if it has substance, can enable the appellants to get the relevant provisions of the Act struck down as prayed for by them. (Para 5). *Standard Chartered Bank* v. *Directorate of Enforcement*, (2006) 4 SCC 278: (2006) 2 SCC (Cri) 221: AIR 2006 SC 1301: (2006) 127 DLT 747: (2006) 197 ELT 18.

Bench Strength **3**. Coram: *Y.K. Sabharwal, C.J.* and *C.K. Thakker* and **P.K. Balasubramanyan**, JJ. [Date of decision: 24-2-2006]

[470] — Ss. 50, 51, 61, 56 & 68 — Writ of prohibition seeking to restrain the authorities concerned from proceeding with proposed adjudication and prosecution pursuant to notices issued to petitioner under FERA — Refusal of High Court to grant — Sustainability — *Claim based on challenge to relevant provisions of FERA as unconstitutional — Said challenge found unsustainable — Further, notices could not be said to be issued without authority of law — On these facts, held, High Court rightly declined to issue the aforesaid writ*

A writ of prohibition will issue to prevent a tribunal or authority from proceeding further when the authority proceeds to act without or in excess of jurisdiction; proceeds to act in violation of the rules of natural justice; or proceeds to act under a law which is itself ultra vires or unconstitutional. (Para 25)

The prayer for the issue of a writ of prohibition restraining the authorities under FERA from proceeding with the adjudication and the prosecution is essentially based on the constitutional challenge to the relevant provisions FERA, 1973 on the ground that they violate Articles 14 and 21 of the Constitution. Once it is held that the provisions are constitutional, the basis on which the writ of prohibition is sought for by the appellants disappears. Therefore, the High Court rightly refused the prayer for the issue of the said writ. Further, on the facts of this case, it cannot be said that the notices issued are palpably without authority of law. In that situation, the appellants cannot successfully challenge the refusal by the High Court of the writ of prohibition prayed for by them. (Para 25) . *Standard Chartered Bank* v. *Directorate of Enforcement*, (2006) 4 SCC 278: (2006) 2 SCC (Cri) 221: AIR 2006 SC 1301: (2006) 127 DLT 747: (2006) 197 ELT 18.

Bench Strength **3**. Coram: *Y.K. Sabharwal, C.J.* and *C.K. Thakker* and **P.K. Balasubramanyan**, JJ. [Date of decision: 24-2-2006]

— S. 51 *See also* Ss. 50, 51, 52 and 54
See also Ss. 50, 51, 61, 56 & 68
See also Ss. 68, 50, 51 and 56

[471] — Ss. 51 and 56 — Adjudication and prosecution — Simultaneous continuance of — Whether adjudication must precede prosecution — *Held, both the said proceedings are independent of each other and each subserves a purpose — These proceedings can be launched and pursued simultaneously — Hence, it cannot be accepted that unless adjudication under S. 51 is completed, prosecution under S. 56 cannot be initiated — No indication in the Act that the prosecution depends upon the result of the adjudication — Finding in one is not conclusive in the other — Object of FERA, 1973, its inclusion in IXth*

Sch. to Constitution, legislative intent and presence of "without prejudice" clause in S. 56 taken note of

In the instant case it was contended by the appellants that under the scheme of the FERA, the adjudication proceedings must precede the prosecution. It was submitted that there should first be an adjudication and thereafter, if the Directorate of Enforcement feels that the penalty is inadequate, to consider the launching of a prosecution. It was argued that the adjudication proceedings would give an idea to the authorities under the Act as to the gravity of the violation and the opportunity to decide whether the contravention deserved also a punishment by way of prosecution. If in the adjudication proceedings it is found that the alleged offender has not infringed any of the provisions of the Act, there will be no occasion for the Directorate of Enforcement to prosecute the person concerned. It would then be incongruous and unreasonable for the Directorate of Enforcement to prosecute a person for violating the FERA, when in the adjudication proceedings against him, it had been found that the person had not violated any of the provisions of the FERA.

Rejecting the aforesaid contentions,

Held :

There is no justification in accepting the argument that unless an adjudication proceeding under Section 51 of the Act is completed, a prosecution under Section 56 of the FERA cannot be initiated. Both proceedings can simultaneously be launched and can simultaneously be pursued. (Para 23)

FERA subserves a twin purpose. One, to ensure that no economic loss is caused by the alleged contravention by the imposition of an appropriate penalty after an adjudication under Section 51 of the Act and two, to ensure that the tendency to violate is curbed by imposing an appropriate punishment after a due prosecution in terms of Section 56 of the Act. The contention that as a matter of construction-since the provisions could not be attacked as violative of the rights under Part III of the Constitution-the Supreme Court should interpret the provisions of the Act and hold that an adjudication has to precede a prosecution cannot be accepted as there is nothing in the provisions of the Act justifying such a construction. On the scheme of the Act, the two proceedings are seen to be independent and the launching of the one or the other or both is seen to be controlled by the respective provisions themselves. (Para 22)

The Act was enacted, as indicated by its preamble, for the conservation of foreign exchange resources of the country and the proper utilisation thereof in the economic development of the country. When interpreting such a law, in the absence of any provision in that regard in the Act itself, there is no reason to restrict the scope of any of the provisions of the Act, especially in the context of the presence of the "without prejudice" clause in Section 56 of the Act dealing with offences and prosecutions. The very purpose of the Act and the very object of inclusion of the Act in the Ninth Schedule to the Constitution justifies an interpretation of the provisions as they stand on the basis that there is nothing arbitrary or unreasonable in the provisions and in the scheme as enacted. (Para 22)

Further, Section 23-D of the Foreign Exchange Regulation Act, 1947 which was considered in *Rayala Corpn. (P) Ltd.* had a proviso, which indicated that the adjudication for the imposition of penalty should precede the making of a complaint in writing to the court concerned for prosecuting the offender. The absence of a similar proviso to Section 56 or to Section 51 of the present Act, is also a clear indication that the legislature intended to treat the two proceedings as independent of each other. (Para 22)

There is nothing in the Act to indicate that a finding in an adjudication is binding on the court in a prosecution under Section 56 of the Act. There is no indication that the prosecution depends upon the result of the adjudication. The two proceedings are independent. The finding in one is not conclusive in the other. (Para 24). *Standard Chartered Bank* v. *Directorate of Enforcement*, (2006) 4 SCC 278: (2006) 2 SCC (Cri) 221: AIR 2006 SC 1301: (2006) 127 DLT 747: (2006) 197 ELT 18.

Bench Strength **3**. Coram: *Y.K. Sabharwal*, *C.J.* and *C.K. Thakker* and **P.K. Balasubramanyan**, JJ. [Date of decision: 24-2-2006]

A.S.G. Jothimani Nadar v. Dy. Director, Enforcement Directorate, (1984) 3 ECC 319 (Mad); Anilkumar Aggarwal v. K.C. Basu, 2003 Cri LJ 2197 (AP), approved

State of W.B. v. Anwar Ali Sarkar, 1952 SCR 284: AIR 1952 SC 75: 1952 Cri LJ 510; Rayala Corpn. (P) Ltd. v. Director of Enforcement, (1969) 2 SCC 412, distinguished

K.C. Builders v. CIT, (2004) 2 SCC 731, distinguished and doubted

— **S. 52** *See* Ss. 50, 51, 52 and 54

— **S. 54** *See* Ss. 50, 51, 52 and 54

— **S. 56** *See also* Ss. 50, 51, 56 and 68

See also Ss. 68, 50, 51 and 56

[472] — S. 56 — Applicability of — Liability of company in offences committed by it — *Section prescribing mandatory punishment of imprisonment and fine — Fact that no imprisonment can be imposed on company or incorporated body — Effect of — Whether company enjoys any immunity from prosecution in such a case — Supreme Court in* Standard Chartered Bank, *(2005) 4 SCC 530 holding that though company cannot be sentenced to imprisonment, it can nevertheless be prosecuted and the court*

can impose punishment of fine instead — Therefore, present case to proceed on the said basis — Thus, held, the Bank in question was liable to be prosecuted

The majority in the Constitution Bench decision in *Standard Chartered Bank*, (2005) 4 SCC 530 held that there could be no objection to a company being prosecuted for penal offences under the FERA and the fact that a sentence of imprisonment and fine has to be imposed and no imprisonment can be imposed on a company or an incorporated body, would not make Section 56 of the FERA inapplicable and that a company did not enjoy any immunity from prosecution in respect of offences for which a mandatory punishment of imprisonment is prescribed. In the light of the said decision the Supreme Court in the present case has to proceed on the basis that the appellant Banks are liable to be prosecuted for offences under the FERA. (Para 4). *Standard Chartered Bank* v. *Directorate of Enforcement*, (2006) 4 SCC 278: (2006) 2 SCC (Cri) 221: AIR 2006 SC 1301: (2006) 127 DLT 747: (2006) 197 ELT 18.

Bench Strength **3**. Coram: *Y.K. Sabharwal*, *C.J.* and *C.K. Thakker* and **P.K. Balasubramanyan**, JJ. [Date of decision: 24-2-2006]

Standard Chartered Bank v. Directorate of Enforcement, (2005) 4 SCC 530: 2005 SCC (Cri) 961, followed

Asstt. Commr. v. Velliappa Textiles Ltd., (2003) 11 SCC 405: 2004 SCC (Cri) 1214, held overruled

— S. 61 *See also* Ss. 50, 51, 61, 56 & 68

[473] — S. 61 — Notice to be issued in case of transaction done without permission under the Act — Form and contents of — Requirement to be fulfilled — *Held, notice should set out the alleged contravention and call upon the accused to show whether he had requisite permission for the transaction in question — If so done, that will satisfy the requirement of S. 61*

Section 61(2) of the FERA makes it clear that no court can take cognizance of an offence except upon a complaint by the officer referred to therein. The proviso to Section 61(2) of the Act provides that no complaint regarding the offences referred to in that section shall be made unless an opportunity is given to the person concerned to show that he had the requisite permission where the offence charged is an act which requires permission under the Act. If the notice sets out the alleged contravention, (an act which could have been done with permission) and calls upon the person accused of the offence to show whether he had the requisite permission for the transaction, that will satisfy the requirement of the section. (Para 11). *Standard Chartered Bank* v. *Directorate of Enforcement*, (2006) 4 SCC 278: (2006) 2 SCC (Cri) 221: AIR 2006 SC 1301: (2006) 127 DLT 747: (2006) 197 ELT 18.

Bench Strength **3**. Coram: *Y.K. Sabharwal*, *C.J.* and *C.K. Thakker* and **P.K. Balasubramanyan**, JJ. [Date of decision: 24-2-2006]

[474] — S. 61 — Notices issued in terms of — Writ of prohibition against — Maintainability — *Held, not maintainable — Persons to whom notices sent had sufficient opportunities available to them to put forward their defences/contentions before the criminal court in the prosecutions launched against them in that behalf — Hence, it was not possible to issue the writ of prohibition on the ground that the notices in question did not satisfy the jurisdictional requirement under S. 61*

The notices issued under Section 61 of the FERA are merely notices of enquiry, giving an opportunity to the appellants of showing that they had the necessary permission from the authority concerned under the FERA in respect of the particular transaction. On failure of the appellants to show that they had the requisite permission, a complaint will have to be lodged before the Magistrate concerned and the Magistrate will consider whether the process should issue on the basis of the complaint made before him. In view of the fact that sufficient opportunities will be available to the appellants to put forward their contentions before the criminal court concerned, it cannot be said that there is any merit in the challenge to the notices issued under Section 61 of the FERA. The said notices are really in terms of Section 61 of the FERA and their scope and ambit is also controlled by Section 61 of the FERA and on receipt of those notices, it was open to the appellants to show that they had the necessary permission from the authority concerned under the Act. Of course, if they do not have such permission, apparently, in the case on hand, there was no such permission, they have necessarily to put forward their defences before the criminal court in the prosecutions that have been launched in that behalf. (Paras 10 and 14)

Thus, there is no reason to interfere with the said notices in these writ petitions and that it would be appropriate to leave the appellants to their available defences in the prosecutions that have been initiated. Suffice it to say that it is not possible to issue the writ of prohibition as sought for by the appellants on the ground that these notices do not satisfy the jurisdictional requirement under Section 61 of the Act. (Paras 10 and 13). *Standard Chartered Bank* v. *Directorate of Enforcement*, (2006) 4 SCC 278: (2006) 2 SCC (Cri) 221: AIR 2006 SC 1301: (2006) 127 DLT 747: (2006) 197 ELT 18.

Bench Strength **3**. Coram: *Y.K. Sabharwal*, *C.J.* and *C.K. Thakker* and **P.K. Balasubramanyan**, JJ. [Date of decision: 24-2-2006]

[475] — S. 61 — Notices issued under — Nature and purpose of — *Held, these were merely notices of enquiry — These did not decide anything but only gave an opportunity to the persons concerned to show that they had necessary permission from the authorities concerned in respect of the transaction in question*

The notices issued under Section 61 of the FERA are merely notices of enquiry, giving an opportunity to the appellants of showing that they had the necessary permission from the authority concerned under the FERA in respect of the particular transaction. These notices, therefore, do not in any manner decide anything against the appellants and they merely set out the grounds based on which the appellants allegedly violated the provisions of the FERA and since one of the ingredients of the offence is absence of permission from the authority concerned, they are intended only to give an opportunity to the appellants to show that they had the necessary permission and hence, there was no violation of the relevant provision or provisions of the FERA as sought to be made out in the notice. (Para 10). *Standard Chartered Bank* v. *Directorate of Enforcement*, (2006) 4 SCC 278: (2006) 2 SCC (Cri) 221: AIR 2006 SC 1301: (2006) 127 DLT 747: (2006) 197 ELT 18.

Bench Strength **3**. Coram: *Y.K. Sabharwal, C.J.* and *C.K. Thakker* and **P.K. Balasubramanyan**, JJ. [Date of decision: 24-2-2006]

— S. 68 *See also* Ss. 50, 51, 61, 56 & 68

[476] — S. 68 — Constitutional validity of — Challenge to — Offence by company — Prosecution thereunder of person in charge and responsible to company for conduct of its business or other officer who had committed the offence — *Held, said provision cannot be challenged as violative of Art. 14 on ground that it confers unfettered power on the authority concerned to select persons for prosecution — Contention that fiction involved in S. 68(1) where presumption of knowledge attaches to the officers of the company against whom no wrongdoing whatsoever is alleged except by indicating his status in the company, is violative of Art. 21, held, also not sustainable — Further held, in view of FERA being included in Sch. IX to the Constitution, its provisions cannot be challenged as violative of constitutional rights even if contentions raised in that regard had substance*

In the present case an attempt was made to establish that Section 68(1) of the FERA is violative of Article 14 of the Constitution. It was contended that the provisions empowered an investigating officer to pick and choose at his will, in the absence of any definition, all those whom he desires to proceed against and omit those whom he does not want to subject to prosecution. This, it was said, was arbitrary. The prejudice that may be caused to a person sought to be roped in under Section 68 of the FERA was highlighted. It was submitted that the proviso to sub-section (1) would not be a mitigating factor in view of the serious damage done to the reputation of the person alleged to be an offender under the FERA. It was contended that the section permitted a whole class of persons to be prosecuted irrespective of their culpability. Vast and arbitrary powers were conferred on the department to prosecute the same person, a director of the company either under sub-section (1) where the accused carried the burden to prove his absence of knowledge or under sub-section (2) where the prosecution takes on itself the burden of proving the wrongdoing, with a potential to pick and choose between sub-section (1) and sub-section (2). It was argued that this also violated Article 21 of the Constitution. The fiction involved in Section 68(1) would equally violate Article 21 where the presumption of knowledge attaches to the officers of the company against whom no wrongdoing whatsoever is alleged except by indicating his status in the company.

Held :

In view of the fact that the FERA has been included in the Ninth Schedule to the Constitution, the challenge based on Articles 14 and 21 cannot prevail even assuming that the arguments have any substance. (Para 17)

Even that apart, there is no merit in the argument that Section 68 of the FERA confers an unfettered power on the investigating officer to pick and choose at his will, those whom he desires to prosecute and omit those whom he does not want to prosecute, in a case to which Section 68 of the FERA is attracted. On the scheme of the Act, with particular regard to Sections 56, 59, 61 and 68 of the FERA, the provisions cannot be successfully challenged as either being arbitrary or discriminatory. All that Section 68(1) says is that if the commission of an offence by the company is proved, the person who was in charge and was responsible to the company for the conduct of the business of the company at the time the contravention was committed, was to be deemed to be guilty of the contravention and was liable to be proceeded against and punished. He is being punished in view of his status in the company and because it is proved that the company is guilty of contravention of any of the provisions of the FERA. There is nothing unreasonable in this, since a company normally acts through a person who is in charge of its affairs and even in that case, the person in charge and responsible to the company for the conduct of its business, is given an opportunity to show that the alleged contravention by the company

took place without his knowledge or in spite of the exercise of all due diligence by him to prevent such contravention. Section 68(2) is attracted in a case where a company has contravened the provisions of the Act or any rule, direction or order made thereunder and that particular contravention is proved to have taken place with the consent or connivance or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company. In other words, the prosecution, in addition to prosecuting the company, can also prosecute any particular officer whose action or inaction or negligence resulted in the commission of the particular offence by the company. This only means that a person who is instrumental in the commission of an act by the company that is in contravention of FERA or the rules or directions issued thereunder, also lays himself open to prosecution. Having done something or omitted to do something leading to the company contravening the provisions of the Act, the officer concerned cannot say that it is unreasonable to prosecute him also, along with the company and the person in charge of and responsible to the company for the conduct of its business. (Paras 8 and 17)

Thus, the argument that the section violates Article 14 of the Constitution cannot be accepted. The same is the position regarding the argument based on Article 21 of the Constitution. (Para 18). *Standard Chartered Bank* v. *Directorate of Enforcement*, (2006) 4 SCC 278: (2006) 2 SCC (Cri) 221: AIR 2006 SC 1301: (2006) 127 DLT 747: (2006) 197 ELT 18.

Bench Strength **3**. Coram: *Y.K. Sabharwal*, *C.J.* and *C.K. Thakker* and **P.K. Balasubramanyan**, JJ. [Date of decision: 24-2-2006]

— Ss. 68, 50, 51 and 56 *See* WORDS AND PHRASES, (2006) 4 SCC 278

[477] — Ss. 68, 50, 51 and 56 — Offence by company — S. 68 indicating persons who can be proceeded against along with company — Applicability of — *Held, S. 68 not confined only to criminal prosecution — It also applies to penalty proceedings — As such S. 68 can be invoked for imposition of penalty on the said persons along with the company — Rationale being that the essential element for both the penalty proceedings and the criminal prosecution is the same i.e. contravention of any of the provisions of FERA — Words "offence" and "punished" used in S. 68 cannot be confined only to criminal prosecution — S. 68 only clarifies the nature and mode of proceeding when the contravention of any of the provisions of the Act is by a company, whether it be by way of adjudication or by way of prosecution*

The decision of the High Court was challenged by the Union of India and the authorities under the FERA to the extent that the court held that Section 68 of the Act is inapplicable to proceedings for adjudication under Section 51 of the Act and its operation is confined only to prosecutions under the Act. The High Court observed that since the very caption of Section 68 indicates that it deals with offences by a company and as such Section 68 cannot be invoked for the levy of penalty on the persons indicated therein. The High Court opined that in view of the fact that Section 50 also prescribes an outer-limit for the penalty to be imposed and the said penalty can be imposed on the company itself, it would be incongruous to hold that the same quantum of penalty could be recovered from the officials of the company all over again. That would lead to an anomalous position of the penalty exceeding the outer-limit prescribed in Section 50 in respect of a particular offence committed by the company.

Reversing the said findings of the High Court,

Held :

Section 68 of FERA relating to offences by companies, by sub-section (1) introduces a deeming provision that the person who was in charge of and was responsible to the company for the conduct of the business of the company, shall also be deemed to be guilty along with the company of the contravention of the provisions of the Act and liable to be proceeded against and punished accordingly. The proviso, no doubt, indicates that a person liable to punishment could prove that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention. Sub-section (2) again speaks only of a contravention of the provisions of the Act and the persons referred to in that sub-section are also to be deemed to be guilty of the contravention liable to be proceeded against and punished accordingly. (Para 29)

There does not appear to be any reason to confine the operation of Section 68 only to a prosecution and to exclude its operation from a penalty proceeding under Section 50 of the Act, since the essential ingredient of both is the contravention of the provisions of the Act. Both, Section 50 providing for imposition of penalty and Section 56 providing for prosecution, speak of contravention of the provisions of the Act. The contravention makes a person liable both for penalty and for prosecution. Even though the heading to Section 56 refers to offences and prosecutions, what is made punishable by the section is the contravention of the provisions of the Act and the prosecution is without prejudice to any award of penalty. The award of penalty is also based on the same contravention. Section 63 is the power of confiscation of currency, security or any other money or property in respect of which a contravention of the provisions of the Act has

taken place conferred equally on the adjudicating authority and the Court, whether it be during an adjudication of the penalty or during a prosecution. Whereas Section 64(1) relating to preparation or attempt at contravention is confined to Section 56, the provision for prosecution, sub-section (2) of Section 64 makes the attempt to contravene or abetment of contravention, itself a contravention, for the purposes of the Act including an adjudication of penalty under the Act. (Para 29)

The word "offence" is not defined in the Act. According to *Concise Oxford English Dictionary*, it means, "an act or instance of offending". Offend means, "commit an illegal act" and illegal means, "contrary to or forbidden by law". According to *New Shorter Oxford English Dictionary*, an offence is "a breach of law, rules, duty, propriety, etiquette, an illegal act, a transgression, sin, wrong, misdemeanour, misdeed, fault". Thus, An offence only means the commission of an act contrary to or forbidden by law. It is not confined to the commission of a crime alone. It is an act committed against law or omitted where the law requires it and punishable by it. In its legal signification, an offence is the transgression of a law; a breach of the laws established for the protection of the public as distinguished from an infringement of mere private rights; a punishable violation of law, a crime, the doing that which a penal law forbids to be done or omitting to do what it commands. The expression "offence" as defined in Section 3(38) of the General Clauses Act means an act or omission made punishable by any law for the time being in force. (Para 29)

"Punishable" is ordinarily defined as deserving of, or capable or liable to punishment. "Punish" means, "inflict a penalty on as retribution for an offence, inflict a penalty on someone for (an offence)". Punishment is "infliction of a penalty in retribution for an offence; penalty imposed to ensure application and enforcement of a law". It is the penalty for transgressing the law. (Para 29)

Merely because the expression "punished" is used, it does not mean that it is confined to a prosecution under Section 56 of the Act, since the element that attracts the imposition of penalty and the prosecution is the same, namely, the contravention of any of the provisions of the Act. Moreover, there is nothing in the Act which confines the expression "punished" only to a punishment for a criminal prosecution. An imposition of a penalty can also be a punishment. (Para 31)

If a person includes a company, there is no reason to confine Section 68 to a prosecution only, because the company as a person is liable to be proceeded against under Section 50 and Section 56 of the Act, though in a criminal prosecution the punishment by way of imprisonment can be imposed only on the officer or officers of the company referred to in Section 68 of the Act. Section 68 only indicates the manner in which a contravention by a company can be dealt with and it does not show that it is confined in its operation only to prosecutions against a company. It is a general provision relating to a contravening company, which is to be proceeded against whether it be under Section 50 or under Section 56 of the Act. The fact that a fine alone can be imposed on a company in a prosecution under Section 56 of the Act, cannot confine the operation of Section 68 to criminal prosecutions alone under the Act. (Paras 31 and 29)

It is true that the entire penalty that may be imposed on adjudication, is capable of being recovered from the company itself. But that does not mean that it cannot be recovered from the officer in charge of the company or those who connived at or were instrumental in the contravention of the provisions of the Act by the company. Once the ingredient of the offence is contravention of the provisions of the Act and the consequences flowing from the contravention are to make that person including a company liable for penalty as well as for prosecution, there does not appear to be any justification in confining the scope of Section 68 only to prosecutions under Section 56 of the Act. (Para 32). *Standard Chartered Bank* v. *Directorate of Enforcement*, (2006) 4 SCC 278: (2006) 2 SCC (Cri) 221: AIR 2006 SC 1301: (2006) 127 DLT 747: (2006) 197 ELT 18.

Bench Strength **3**. Coram: *Y.K. Sabharwal*, *C.J.* and *C.K. Thakker* and **P.K. Balasubramanyan**, JJ. [Date of decision: 24-2-2006]

— **S. 68(1)** *See* PRACTICE AND PROCEDURE — 'Question of fact', (2006) 4 SCC 278

FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992

See PREVENTIVE DETENTION — 'Particular Statutes'

FOREIGNERS ACT, 1946

See CITIZENSHIP, MIGRANTS AND ALIENS

FURLOUGH

See PRISONS

GANG RAPE

See CRIMES AGAINST WOMEN AND CHILDREN

GENERAL CLAUSES ACTS

1. GENERAL CLAUSES ACT, 1897

— **S. 3(38)** *See* WORDS AND PHRASES, (2006) 4 SCC 278

— **S. 5 — Applicability to notifications affecting rights of parties** *See* ADMINISTRATIVE LAW — 'Subordinate/Delegated legislation' — Notifications, (2006) 1 SCC 314

— S. 8 — Held, applicable where Prevention of Corruption Act, 1947 replaced by Prevention of Corruption Act, 1988 *See* PREVENTION OF CORRUPTION ACT, 1988, S. 13, (2006) 11 SCC 473

— S. 8(1) *See* PROBATION OF OFFENDERS — 'Probation of Offenders Act, 1958', S. 4, (2006) 6 SCC 159, (2006) 5 SCC 396

— Ss. 14 & 21 *See* CONSTITUTION OF INDIA, Arts. 72 and 161, (2006) 8 SCC 161

— S. 21 *See* ADMINISTRATIVE LAW — 'Subordinate/Delegated legislation' — Notifications, (2006) 6 SCC 162

— S. 27 *See* NEGOTIABLE INSTRUMENTS ACT, 1881, Ss. 138 proviso (b), (c) and 142, (2006) 6 SCC 456

2. KERALA INTERPRETATION AND GENERAL CLAUSES ACT, 1925 (7 OF 1925)

See ADMINISTRATIVE LAW — 'Subordinate/Delegated legislation' — Notifications, (2006) 6 SCC 162

3. U.P. GENERAL CLAUSES ACT, 1904

— S. 5 — Applicability to notifications affecting rights of parties *See* ADMINISTRATIVE LAW — 'Subordinate/Delegated legislation' — Notifications, (2006) 1 SCC 314

GUARDIANS AND WARDS ACT, 1890

See FAMILY LAW

HIGH COURTS

1. CRIMINAL RULES OF PRACTICE AND ORDERS, 1931 (MADRAS HIGH COURT)

— R. 72 *See* EVIDENCE ACT, 1872, S. 24, (2006) 1 SCC 714

2. LETTERS PATENT OF CALCUTTA HIGH COURT

— Cl. 15 — Appeal under, against such orders passed in contempt proceedings as are not appealable under S. 19, Contempt of Courts Act, 1971 — Maintainability *See* CONTEMPT OF COURT — 'Contempt of Courts Act, 1971', Ss. 19, 10 & 11, (2006) 5 SCC 399

[478] — Cl. 15 — Appeal under — Maintainability — Standing — *Suspended bank employee filing contempt application impleading the Chairman and the Secretary in charge of the Bank* ***eo nomine*** *as respondents but not impleading the Bank — Proceeding on the basis that the said two officers of the Bank represented the Bank, Single Judge of High Court directing them to reinstate the complainant and to pay all salary arrears to him — In such circumstances although the Bank did not file any appeal, the appeal filed by the Chairman and Secretary in charge of the Bank* ***eo nomine****, held nonetheless maintainable as directions were issued to them and they were persons aggrieved*

The order dated 20-11-1998 against which the appeal was filed, was passed by the Single Judge in the course of contempt proceedings. The Chairman and the Secretary-in-Charge were parties to such proceedings having been impleaded *eo nomine* as respondents. "The Bank" as such was not a party to the contempt proceedings. The Single Judge proceeded on the basis that the Chairman and the Secretary-in-Charge represented "the Bank" by referring to them as "the respondent Bank" and directing them to reinstate the complainant (the respondent herein) and to pay all salary arrears to him. Therefore, certainly they could file an appeal against such directions. The directions were issued to them and they were the persons aggrieved. (Para 17)

The Division Bench erred in holding that the appeal against the said order of the Single Judge having been filed by the Chairman and the Secretary in charge of the Bank *eo nomine*, and not by the "Bank" itself, was not maintainable under clause 15 of the Letters Patent. Though the order of the Single Judge dated 20-11-1998, by which several directions to the Bank with reference to the first respondent were issued, was not a final "judgment", the same was an "interlocutory judgment" which finally decided several rights and obligations of the employee vis-à-vis the employer and, was therefore, appealable under clause 15 of the Letters Patent. (Para 18). *Midnapore Peoples' Coop. Bank Ltd.* v. *Chunilal Nanda*, (2006) 5 SCC 399: AIR 2006 SC 2190: 2006 Cri LJ 2903: (2006) 102 Cut LT 452.

Bench Strength **2**. Coram: *B.P. Singh* and **R.V. Raveendran**, JJ. [Date of decision: 25-5-2006]

[479] — Cl. 15 — Term "judgment" occurring in — Scope — *Held, it covers not only the judgments and orders stated respectively in S. 2(9) and Or. 43 R. 1 CPC but also interlocutory orders which might have finality in regard to some collateral matter affecting the vital and valuable rights and obligations of the parties — Categories of interlocutory orders falling within and falling without the scope of the term "judgments" for the purpose of filing letters patent appeals specified — Interlocutory order passed by Single Judge, High Court in contempt proceeding, directing the complainant to be reinstated with full back wages, held, was an "interlocutory judgment" which finally decided several rights and obligations of the employee vis-à-vis the employer — Hence, appealable under cl. 15 — Words and phrases — "Judgment" — Civil Procedure Code, 1908, S. 2(9) and Or. 43 R. 1*

Re: Point (ii)

The term "judgment" occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in Section 2(9) CPC and orders enumerated in Order 43 Rule 1 CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in

regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which finally decide: (*i*) a question or issue in controversy in the main case, or (*ii*) an issue which materially and directly affects the final decision in the main case, or (*iii*) a collateral issue or question which is not the subject-matter of the main case, are, therefore, "judgments" for the purpose of filing appeals under the Letters Patent. On the other hand, (*i*) routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment, and (*ii*) orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties, are not "judgments" for the purpose of filing letters patent appeals. (Paras 15 and 16)

The order dated 20-11-1998 against which the appeal was filed, was passed by the Single Judge in the course of contempt proceedings. The Chairman and the Secretary-in-Charge were parties to such proceedings having been impleaded *eo nomine* as respondents. "The Bank" as such was not a party to the contempt proceedings. The Single Judge proceeded on the basis that the Chairman and the Secretary-in-Charge represented "the Bank" by referring to them as "the respondent Bank" and directing them to reinstate the complainant (the respondent herein) and to pay all salary arrears to him. Therefore, certainly they could file an appeal against such directions. The directions were issued to them and they were the persons aggrieved. (Para 17)

The Division Bench erred in holding that the appeal against the said order of the Single Judge having been filed by the Chairman and the Secretary in charge of the Bank *eo nomine*, and not by the "Bank" itself, was not maintainable under clause 15 of the Letters Patent. Though the order of the Single Judge dated 20-11-1998, by which several directions to the Bank with reference to the first respondent were issued, was not a final "judgment", the same was an "interlocutory judgment" which finally decided several rights and obligations of the employee vis-à-vis the employer and, was therefore, appealable under clause 15 of the Letters Patent. (Para 18). *Midnapore Peoples' Coop. Bank Ltd.* v. *Chunilal Nanda*, (2006) 5 SCC 399: AIR 2006 SC 2190: 2006 Cri LJ 2903: (2006) 102 Cut LT 452.

Bench Strength 2. Coram: *B.P. Singh* and **R.V. Raveendran**, JJ. [Date of decision: 25-5-2006]

3. LISTING OF BUSINESS BEFORE BENCHES

[480] — Listing/Transfer of matters/Allocation of work to Benches — Listing/Allocation of work to Benches — Power in respect of — *Held, if a Single Judge or Division Bench of High Court require a particular case to be listed before it for valid reasons, it should direct the Registry to obtain appropriate orders from the Chief Justice — Assignment of business of High Court both on judicial and administrative sides is the prerogative of the Chief Justice — He alone has power to decide as to how the Benches of the High Court are to be constituted — Powers of Chief Justice*

It is the prerogative of the Chief Justice to assign business of the High Court both on judicial and administrative sides. The Chief Justice alone has the power to decide as to how the Benches of the High Court are to be constituted. That necessarily means that it is not within the competence of any Single or Division Bench of the High Court to give any direction to the Registry in that behalf which will run contrary to the directions of the Chief Justice. Therefore, in the scheme of things, judicial discipline demands that in the event a Single Judge or a Division Bench considers that a particular case requires to be listed before it for valid reasons, it should direct the Registry to obtain appropriate orders from the Chief Justice. (Para 19). *Jasbir Singh* v. *State of Punjab*, (2006) 8 SCC 294: (2006) 3 SCC (Cri) 470.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 11-10-2006]

4. POWERS OF CHIEF JUSTICE

See 'Listing of business before Benches', above, (2006) 8 SCC 294

HINDU LAW

1. GENERALLY

— Hindu family arrangements that can be presumed *See* CRIMINAL TRIAL — 'Witnesses' — Hostile witness, (2005) 13 SCC 255

— Inter-caste marriages — Validity and desirability of *See* CONSTITUTION OF INDIA — 'Article 21' — Right to freedom of conscience and expression, Arts. 21, 25, 19(1)(a), 32, 38, 51-A(e) and Preamble, (2006) 5 SCC 475

2. HINDU MARRIAGE ACT, 1955

— S. 5 *See* CONSTITUTION OF INDIA — 'Article 21' — Right to freedom of conscience and expression, Arts. 21, 25, 19(1)(a), 32, 38, 51-A(e) and Preamble, (2006) 5 SCC 475

— S. 13-B *See* CONSTITUTION OF INDIA, Art. 142, (2005) 13 SCC 410

3. HINDU MINORITY AND GUARDIANSHIP ACT, 1956

— Ss. 6 and 5 — Issuance of writ of habeas corpus by Supreme Court to grant custody of child to its natural mother *See* CONSTITUTION OF INDIA — 'Article 32' — Particular writs — Habeas corpus, Arts. 32 and 226, (2006) 9 SCC 364

HOSTILE WITNESS

See CRIMINAL TRIAL — 'Witnesses'

HUMAN AND CIVIL RIGHTS

— Protection of — Insulating police machinery from political interference *See* POLICE — 'Generally', (2006) 8 SCC 1

IMMORAL TRAFFIC (PREVENTION) ACT, 1956

— Ss. 18 and 20 *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 20(1), (2) & (5), (2006) 5 SCC 745

INCOME TAX

INCOME TAX ACT, 1961

[481] — Ss. 252 and 255 — Disproportionate assets cases against powerful political personalities (former Chief Ministers of State of Bihar, R-4 and R-5) — Change of member of ITAT to benefit said persons and other procedural irregularities alleged — Sustainability — *Held (per majority), allegations that there were serious irregularities in disposing of cases of R-4 and R-5 before ITAT are not factually correct*

Per majority:

Per Balakrishnan, J.

After going through the affidavits and reports and various other papers, it is seen that the allegations made by the petitioners are not true. The allegations made by the petitioners that there were serious irregularities in disposing of the cases of Respondents 4 and 5 before the ITAT are not factually correct. The very foundation of the allegation that Shri Tyagi, member of the Appellate Tribunal was transferred from Patna to Delhi at a time when he was hearing appeals is factually incorrect. It is also not correct to say that appeals were disposed of by a member of the Tribunal who was on the verge of retirement. The petitioners could not point out any procedural irregularity in the manner in which these appeals were disposed of by ITAT. (Para 14)

Per Lakshmanan, J.

Pursuant to the directions of the Supreme Court, the President of ITAT filed a detailed report dated 9-3-2005 before it. A perusal of this report shows that there is not an iota of truth in the allegations and all the averments of the petitioners are completely baseless. (Para 39). *Rajiv Ranjan Singh 'Lalan' (VIII)* v. *Union of India*, (2006) 6 SCC 613: (2006) 3 SCC (Cri) 125.

Bench Strength **3**. Coram: **K.G. Balakrishnan**[1], **Dr. Ar. Lakshmanan**[2] and **S.H. Kapadia**[3], JJ. [Date of decision: 21-8-2006]

— S. 260-A *See* CONSTITUTION OF INDIA — 'Article 32' — Public Interest Litigation/PIL, Art. 32, (2006) 6 SCC 613

[482] — S. 260-A — Appeal under — Maintainability — Conclusion of Tribunal without any basis or based on irrelevant considerations — Unwarranted remarks against officers of Revenue — *Per Kapadia, J. although the High Court under Section 260-A of the IT Act cannot enquire into the sufficiency of materials or substitute its judgment for that of the Tribunal in regard to facts, nevertheless, if the conclusion drawn by the Tribunal is without any basis or based on irrelevant considerations then the High Court is required to interfere under S. 260-A — Also, strong observations having been made by the Tribunal against officers of Revenue without any basis, filing of appeals thereagainst was warranted*

Per Kapadia, J.

Additions had been made by the Revenue Department to the income of the assessee Respondent 4 under various orders passed by the assessing officer and the Commissioner of Income Tax (Appeals). These orders were challenged by the assessee before the Tribunal. By the impugned judgment the appeals filed by the assessee were allowed by the Tribunal. While allowing the appeal of the assessee the Tribunal held that the case involved highly intricate issues; that, these issues were extremely difficult to understand; that, but for the assistance of the learned advocates on both sides it was difficult to adjudicate such disputes. At the same time the Tribunal without any basis castigated the officers of the Revenue Department including the Commissioner (Appeals) saying that rampant additions were made to the income of the assessees to destroy the case of the assessees and to destroy the political career of Respondent 5. Similarly, the Tribunal has castigated the higher officers of the Department saying that they were biased and that they had acted at the behest of the Centre in clubbing the income of Respondent 4 with that of Respondent 5, who was going through political crisis. (Paras 81 and 82)

There is no basis given in the impugned decision of the Tribunal for making such strong observations against the officers of the Revenue. Such comments have been made without any basis and yet till today appeals have not been filed by the Government under Section 260-A of the IT Act. Although the High Court under Section 260-A of the IT Act would not have enquired into the sufficiency of materials or substituted its judgment for that of the Tribunal in regard to facts, nevertheless, if the conclusion drawn by the Tribunal is without any basis or based on irrelevant considerations then the High Court was required to interfere under Section 260-A. (Paras 83 and 85)

Even the Tribunal has observed in its judgment that complicated legal issues were involved in the matter; that, even the members of the Tribunal found it very difficult to understand those issues, particularly, matters involving interpretation of Sections 131, 131(1-A), 273-A and 147/148 of the IT Act. If the issues were so difficult for the members to understand

it cannot be appreciated why high-ranking officers of the Department were castigated by the Tribunal. The Supreme Court has noticed in a number of cases that even an innocuous statement of the Tribunal against the Revenue Officers is challenged before the higher courts on the ground that such observations are aspersions against the officers who have performed their duty and that they need to be expunged. Surprisingly, in this particular case till date no such appeal has been filed under Section 260-A of the IT, Act. Besides, the judgment of the Jurisdictional Tribunal on the scope and interpretation of the above sections which the Tribunal itself says involve complex legal issues, is binding on the assessing officers and the Appellate Authority within that jurisdiction. If so it cannot be understood why the Department has not moved in appeal under Section 260-A of the IT Act. (Para 85)

Moreover, arguments have been vehemently advanced on behalf of Respondent 1 Union of India saying that these petitions need to be dismissed as the petitioners have made irresponsible statements against judicial officers and members of the Tribunal whose service records are sought to be tarnished. Applying the same yardstick one fails to understand as to why the Revenue has not moved in appeal even when its own higher officers are branded as biased in deciding the matters against Respondents 4 and 5. Their service records are as important as the service records of members of the trial court or the judicial officers. (Para 86). *Rajiv Ranjan Singh 'Lalan' (VIII)* v. *Union of India*, (2006) 6 SCC 613: (2006) 3 SCC (Cri) 125.

Bench Strength 3. Coram: **K.G. Balakrishnan**[1], **Dr. Ar. Lakshmanan**[2] and **S.H. Kapadia**[3], JJ. [Date of decision: 21-8-2006]

— S. 260-A — Prayer for direction to Revenue for filing an appeal under, by Supreme Court in PIL under Art. 32 — Maintainability *See* CONSTITUTION OF INDIA — 'Article 32' — Public Interest Litigation/PIL, Art. 32, (2006) 6 SCC 613

INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1986

See also CRIMES AGAINST WOMEN AND CHILDREN

— Ss. 3, 4 and 6 — "Obscenity" — Meaning of — Restriction of freedom of expression on ground of obscenity — Considerations and concerns involved *See* CONSTITUTION OF INDIA — 'Article 19' — Article 19(2) — Reasonable restrictions, Art. 19(2), (2007) 1 SCC 143

— Ss. 3, 4 and 6 — "Obscenity" — Standard to be adopted for judging obscenity *See* CONSTITUTION OF INDIA — 'Article 19' — Article 19(2) — Reasonable restrictions, Art. 19(2), (2007) 1 SCC 143

— Ss. 3, 4 and 6 — "Obscenity" — What is — Held, nudity alone is not enough to make material legally obscene *See* CONSTITUTION OF INDIA, Art. 19(2), (2007) 1 SCC 143

— Ss. 3, 4 and 6 — Obscenity and art — Test to be applied in determining whether work in question is obscene or a work of art — Role of experts *See* CONSTITUTION OF INDIA — 'Article 19' — Article 19(2) — Reasonable restrictions, Art. 19(2), (2007) 1 SCC 143

— Ss. 3, 4 and 6 — Protection of minors/children from harmful and disturbing materials — Sufficiency of provisions under *See* CONSTITUTION OF INDIA — 'Article 19' — Article 19(1)(a) — Freedom of Press, Arts. 19(1)(a) & (2), (2007) 1 SCC 143

— Ss. 3, 4 and 6 — Publication whether "obscene" — Approach to be taken — Need for publication to be viewed as a whole *See* CONSTITUTION OF INDIA — 'Article 19' — Article 19(2) — Reasonable restrictions, Art. 19(2), (2007) 1 SCC 143

INDUSTRIAL DISPUTES ACT, 1947

See LABOUR LAW

INIMICAL WITNESS

See CRIMINAL TRIAL — 'Witnesses'

INJURED WITNESS

See CRIMINAL TRIAL — 'Witnesses'

INQUEST REPORT

See CRIMINAL TRIAL

INSURANCE

See MOTOR VEHICLES

— Motor Insurance — Insurer's liability *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 149(2), 147, 3, 163-A, 166 and 170, (2006) 4 SCC 250; S. 149(2)(a)(ii), (2006) 7 SCC 318

INTELLECTUAL PROPERTY

COPYRIGHT ACT, 1957

[483] — S. 13 — "Originality" — What amounts to — Works in which copyright subsists — Law report — Version of text of judgments as published in a law report — Copyright, if subsists in — *In SLP against High Court's common order in* EBC *v.* Navin J. Desai, *2002 PTC 641, held, the matter requires consideration — Leave granted — Insofar as interim order is concerned, respondents stating that they have neither copied nor have any intention to copy the material/additions which may have been added by the petitioner in [the judgments as published in their law report "Supreme Court Cases"] in respect of years between 1969 and 2003 — Civil Procedure Code, 1908, Or. 39 R. 1. Eastern Book Co.* v. *D.B. Modak*, (2005) 13 SCC 802: 2006 SCC (L&S) 1597: (2006) 2 SCC (Cri) 306.

Bench Strength 2. Coram: *Y.K. Sabharwal* and *D.M. Dharmadhikari*, JJ. [Date of decision: 27-9-2004]

[**Ed.**: For the facts of the matter see the impugned judgment of the High Court, *EBC* v. *Navin J. Desai*, 2002 PTC 641.]

[484] — S. 13 — "Originality" — What amounts to — Works in which copyright subsists — Law report — Version of text of judgments as published

in a law report — Copyright, if subsists in — *In SLP filed against High Court's common order in* EBC *v.* Navin J. Desai, *2002 PTC 641, leave granted — Held, pending decision of the appeal, respondents will be entitled to sell their CD-ROMs with the text of the judgment of the Supreme Court along with the headnotes which should not, in any way, be copy of the headnotes and text of the petitioners' law report "Supreme Court Cases" — Civil Procedure Code, 1908, Or. 39 R. 1 — Intellectual property matters — Interference at interim stage. Eastern Book Co.* v. *Navin J. Desai*, (2005) 13 SCC 803: 2006 SCC (L&S) 1598: (2006) 2 SCC (Cri) 307.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *D.M. Dharmadhikari*, JJ. [Date of decision: 15-10-2004]

[**Ed.**: For the facts of the matter see the impugned judgment of the High Court, *EBC* v. *Navin J. Desai*, 2002 PTC 641.]

INTERESTED OR PARTISAN WITNESS

See CRIMINAL TRIAL — 'Witnesses'

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966

See INTERNATIONAL LAW

INTERNATIONAL LAW

1. ALIENS

— Deportation of — Procedure for *See* CONSTITUTION OF INDIA — 'Article 21' — Foreigners, Arts. 21, 19(1)(e) & 73, (2006) 3 SCC 705

2. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966

— Art. 13 *See* CONSTITUTION OF INDIA — 'Article 21' — Foreigners, Arts. 21, 19(1)(e) & 73, (2006) 3 SCC 705

INTERPRETATION OF JUDGMENTS

See CONSTITUTION OF INDIA — 'Article 141' — Binding effect of law declared by the Supreme Court, Art. 141, (2006) 3 SCC 434; Arts. 142, 136 and 141, (2006) 1 SCC 638

INTERPRETATION OF STATUTES

See also STATUTE LAW

Synopsis

1. Basic Rules
   (a) Literal or strict construction
   (b) Mischief rule
   (c) Purposive construction
2. Subsidiary Rules
   (a) Anomaly, absurdity, hardship, redundancy, repugnancy
   (b) Mandatory or directory
3. Internal Aids
   (a) Non obstante clause
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5. Presumptions

1. BASIC RULES

(a) Literal or strict construction

[485] — Narrow construction

Narrow and pedantic construction may not always be given effect to. (Para 23). *A.N. Roy* v. *Suresh Sham Singh*, (2006) 5 SCC 745: (2006) 3 SCC (Cri) 75: AIR 2006 SC 2677.

Bench Strength **2**. Coram: **H.K. Sema** and *A.K. Mathur*, JJ. [Date of decision: 4-7-2006]

[486] — Plain meaning — *Court cannot enlarge scope of legislation or intention when language of the statute is plain and unambiguous* (Para 2). *A.N. Roy* v. *Suresh Sham Singh*, (2006) 5 SCC 745: (2006) 3 SCC (Cri) 75: AIR 2006 SC 2677.

Bench Strength **2**. Coram: **H.K. Sema** and *A.K. Mathur*, JJ. [Date of decision: 4-7-2006]

(b) Mischief rule

— Applied *See* NEGOTIABLE INSTRUMENTS ACT, 1881, S. 138 and proviso (c), (2006) 6 SCC 456; Ss. 138 proviso (b), (c) and 142, (2006) 6 SCC 456

(c) Purposive construction

[487] — Ambiguity to be resolved consistent with purpose of the provision

When an expression is capable of more than one meaning, the court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the great consequences of the alternative constructions. (Para 23). *A.N. Roy* v. *Suresh Sham Singh*, (2006) 5 SCC 745: (2006) 3 SCC (Cri) 75: AIR 2006 SC 2677.

Bench Strength **2**. Coram: **H.K. Sema** and *A.K. Mathur*, JJ. [Date of decision: 4-7-2006]

— Application of *See* FOREIGN EXCHANGE REGULATION ACT, 1973, (2006) 4 SCC 278

2. SUBSIDIARY RULES

(a) Anomaly, absurdity, hardship, redundancy, repugnancy

[488] — Court should avoid a construction, which would reduce the legislation to futility

Narrow and pedantic construction may not always be given effect to. (Para 23). *A.N. Roy* v. *Suresh Sham Singh*, (2006) 5 SCC 745: (2006) 3 SCC (Cri) 75: AIR 2006 SC 2677.

Bench Strength **2**. Coram: **H.K. Sema** and *A.K. Mathur*, JJ. [Date of decision: 4-7-2006]

(b) Mandatory or directory

— Use of word "shall" *See* PREVENTION OF CORRUPTION ACT, 1988, S. 17 second proviso, (2006) 7 SCC 172

3. INTERNAL AIDS

(a) Non obstante clause

See PREVENTION OF CORRUPTION ACT, 1988, S. 17, (2006) 7 SCC 172

(b) Proviso

[489] — **Mode of construction** — *Held, it must be considered with relation to the principal matter to which it stands as a proviso, particularly in case of such penal provisions as involved herein [S. 376(2)(f) IPC] — Penal Code, 1860 — Sections 375 and 376 — Rape — Generally, S. 376(2) proviso* (Para 13). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

4. EXTERNAL AIDS

Dictionary meaning

— **Relied on** *See* FOREIGN EXCHANGE REGULATION ACT, 1973, Ss. 68, 50, 51 and 56, (2006) 4 SCC 278

5. PRESUMPTIONS

See EVIDENCE ACT, 1872, Ss. 4, 114, 79 to 90-A, 111-A, 112, 113-A, 113-B and 114-A, (2006) 6 SCC 39

INTOXICANTS

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

[490] — **S. 8 r/w S. 15 and Ss. 50 & 42(2) — Applicability — 127 bags of opium seized from a truck at a public place** — *High Court acquitting the respondent-accused on ground that provisions of Ss. 42(2) and 50 had not been complied with — On facts held, Ss. 42(2) and 50 were inapplicable and hence High Court's judgment unsustainable* (Paras 3 and 4). *Union of India* v. *Major Singh*, (2006) 9 SCC 170: (2006) 2 SCC (Cri) 614.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 30-11-2005]

State of H.P. v. Pawan Kumar, (2005) 4 SCC 350: 2005 SCC (Cri) 943; State of Haryana v. Jarnail Singh, (2004) 5 SCC 188: 2004 SCC (Cri) 1571, followed

— **S. 37** *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 439, 437 and 389, (2005) 13 SCC 144

[491] — **S. 37 — Bail — Grant of, by High Court on the ground that the sample did not contain presence of narcotic and psychotropic substance — Propriety of** — *Held, was not proper where the purported finding disputed by Narcotic Control Bureau* (Para 5). *Narcotic Control Bureau* v. *Raju*, (2006) 9 SCC 712: (2006) 3 SCC (Cri) 372.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Tarun Chatterjee*, JJ. [Date of decision: 31-1-2005]

[492] — **S. 37 — Bail — Grant of, merely on the ground that there was no prospect of early hearing of the appeal — Propriety of** — *Held on facts, was not proper — The same was in disregard of the statutory provisions — Criminal Procedure Code, 1973, S. 389* (Paras 4 and 5). *Union of India* v. *Abdul Momin*, (2005) 13 SCC 144: (2006) 2 SCC (Cri) 130.

Bench Strength **2**. Coram: *B.P. Singh* and *S.H. Kapadia*, JJ. [Date of decision: 7-10-2005]

[493] — **S. 37 — Bail — Grant of, on ground that accused has been in jail for 15 months — Complete ignorance of provision of S. 37** — *Held, order of bail not sustainable — Hence, set aside* (Paras 3 and 4). *Union of India* v. *Saurabh Chatterji*, (2006) 9 SCC 759: (2006) 3 SCC (Cri) 396.

Bench Strength **2**. Coram: *H.K. Sema* and *B.N. Srikrishna*, JJ. [Date of decision: 12-12-2005]

[494] — **S. 37 — Grant of bail in offence under NDPS Act — Relevant considerations — Fact that accused had been in custody for a period of six months — Value of** — *Held, it was not a valid reason to release the accused on bail in a crime of this nature* (Para 5). *Narcotic Control Bureau* v. *Raju*, (2006) 9 SCC 712: (2006) 3 SCC (Cri) 372.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Tarun Chatterjee*, JJ. [Date of decision: 31-1-2005]

[495] — **S. 42 proviso & (2) — Applicability — Search and seizure of a public carrier (truck) at a public place between sunrise and sunset** — *Held, S. 42(2) not applicable where a public conveyance is searched in a public place, the officer making the search is not required to record his satisfaction as contemplated by the proviso to S. 42 for searching the vehicle between sunset and sunrise* (Para 4). *Union of India* v. *Major Singh*, (2006) 9 SCC 170: (2006) 2 SCC (Cri) 614.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 30-11-2005]

State of Haryana v. Jarnail Singh, (2004) 5 SCC 188: 2004 SCC (Cri) 1571, followed

[496] — **S. 50 — Applicability — Search and seizure made from a truck and not from the person of any of the accused** — *Held, S. 50 inapplicable* (Para 3). *Union of India* v. *Major Singh*, (2006) 9 SCC 170: (2006) 2 SCC (Cri) 614.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 30-11-2005]

State of H.P. v. Pawan Kumar, (2005) 4 SCC 350: 2005 SCC (Cri) 943, followed

[497] — **S. 50 — Applicability of — Recovery of contraband article from plastic bag carried by accused at the relevant time** — *In view of* Pawan Kumar, *(2005) 4 SCC 350, held, S. 50 not applicable*

in such a case — Further held, observations made in Namdi Francis Nwazor, *(1998) 8 SCC 534 that if the accused is carrying a handbag or the like and the incriminating article is found therefrom, it would still be a search of the person of the accused requiring compliance with S. 50, is merely an obiter and does not constitute the ratio decidendi — Hence,* Namdi Francis Nwazor, *(1998) 8 SCC 534 was correctly distinguished in* Pawan Kumar, *(2005) 4 SCC 350* (Paras 7, 11, 12 and 16). *State of Haryana* v. *Ranbir*, (2006) 5 SCC 167: 2006 SCC (L&S) 1012: AIR 2006 SC 1796: 2006 Cri LJ 2142: (2006) 2 KLT 370.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-4-2006]

State of H.P. v. Pawan Kumar, (2005) 4 SCC 350: 2005 SCC (Cri) 943, affirmed

Namdi Francis Nwazor v. Union of India, (1998) 8 SCC 534: 1998 SCC (Cri) 1516, distinguished

[498] — Ss. 50 and 15 — Applicability — Recovery of 13 kg 500 gm of poppy husk from a rexine bag carried by the accused — *High Court setting aside the conviction solely on the ground that S. 50 had not been complied with — Sustainability — Held, search conducted of a bag, briefcase or any other article or container carried by the accused is not a search of the person and therefore, in such cases, S. 50 inapplicable — Hence, impugned order set aside and matter remanded back to High Court for decision afresh* (Paras 1 and 2). *State of Haryana* v. *Rajbir Singh*, (2006) 9 SCC 208: (2006) 2 SCC (Cri) 619.

Bench Strength **2**. Coram: *H.K. Sema* and *G.P. Mathur*, JJ. [Date of decision: 14-9-2005]

State of H.P. v. Pawan Kumar, (2005) 4 SCC 350: 2005 SCC (Cri) 943, followed

INVESTIGATION

See CRIMINAL TRIAL

J&K PUBLIC SAFETY ACT, 1978 (6 OF 1978)

See PREVENTIVE DETENTION — 'Particular Statutes'

JUDICIAL PROCESS

— Generally *See* ADMINISTRATIVE LAW — 'Generally', (2006) 6 SCC 613

— Precedent on facts — Binding effect in cases involving similar/identical facts — Judicial discipline *See* CONSTITUTION OF INDIA — 'Article 136' — Effect of grant/dismissal of SLP — Dismissal of SLP without reasoning, Arts. 136 and 141, (2006) 1 SCC 212

— Raison d'être for existence of courts of justice *See* CRIMINAL TRIAL — 'Generally', (2006) 3 SCC 374

JUDICIARY

— Fundamental duty of — Rule of law — Enforcement of — Role of judiciary in *See* RULE OF LAW, (2006) 3 SCC 374

— Role of — Providing content to rights — Preservation and protection of Constitution and law-making *See* CONSTITUTION OF INDIA — 'Article 32' — Nature and Scope — Content of rights, Arts. 32, 226 & 136 and 245, 246 & 368, (2006) 8 SCC 212

— Role of, in preserving rule of law *See* CONSTITUTION OF INDIA — 'Article 32' — Exercise of Power — Preservation of rule of law, Arts. 32, 136, 142, 144 and Preamble, (2006) 3 SCC 399

— Special Judge — Appointment by High Court to try scam case — Judicial review by Supreme Court through PIL *See* CONSTITUTION OF INDIA — 'Article 32' — Public Interest Litigation/PIL, Arts. 32, 233 and 235, (2006) 6 SCC 613

[499] — Generally — Role of, as guardian of rule of law and hence, democratic society itself, highlighted — *Rule of Law — Judiciary — Role of*

In our democratic polity under the Constitution based on the concept of "rule of law" which We have adopted and given to ourselves and which serves as an aorta in the anatomy of our democratic system, THE LAW IS SUPREME. Everyone, whether individually or collectively, is unquestionably under the supremacy of law. Whoever he may be, however high he is, he is under the law. No matter how powerful he is and how rich he may be. Any country or society professing the rule of law as its basic feature or characteristic does not distinguish between high or low, weak or mighty. (Paras 3, 4 and 21)

Disobedience of the Supreme Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilised life in the society. That is why it is imperative and invariable that courts' orders are to be followed and complied with. (Para 5). *T.N. Godavarman Thirumulpad (102)* v. *Ashok Khot*, (2006) 5 SCC 1: AIR 2006 SC 2007: 2006 Cri LJ 2773.

Bench Strength **3**. Coram: *Y.K. Sabharwal, C.J.* and **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 10-5-2006]

JURISPRUDENCE

— Conceptual Jurisprudence — Content of rights — Authority that provides — Courts or legislature — Role of judges in law-making *See* CONSTITUTION OF INDIA — 'Article 32' — Nature and Scope — Content of rights, Arts. 32, 226 & 136 and 245, 246 & 368, (2006) 8 SCC 212

— Fair trial — What is *See* CONSTITUTION OF INDIA — 'Article 21' — Fair and open trial, Arts. 21 and 14, (2006) 3 SCC 374

— **Object of law** *See* PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Sentence, S. 376, (2006) 3 SCC 771

[500] — "Law" — Object and function of — Role of criminal law

The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. In operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. (Para 7)

The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and widespread. (Para 9)

It is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal". If for extremely heinous crime of murder perpetrated in a very brutal manner without any provocation, most deterrent punishment is not given, the case of deterrent punishment will lose its relevance. (Para 13). *Shailesh Jasvantbhai* v. *State of Gujarat*, (2006) 2 SCC 359: (2006) 1 SCC (Cri) 499: 2006 Cri LJ 1132.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 19-1-2006]

[501] — Doctrinal jurisprudence — Fair trial — Genesis of principle of fair trial — Its pervasiveness and centrality in laws and administration of justice — Its nature — *A constant, ongoing development process continually adapted to new and changing circumstances, and exigencies of the situation*

By the traditional common law method of induction there has emerged in our jurisprudence the principle of a fair trial. The principle of fair trial now informs and energises many areas of the law. It is reflected in numerous rules and practices. It is a constant, ongoing development process continually adapted to new changing circumstances, and exigencies to the situation-peculiar at times and related to the nature of crime, persons involved-directly or operating behind, social impact and societal needs and even so many powerful balancing factors which may come in the way of administration of criminal justice system. The principle of a fair trial manifests itself in virtually every aspect of our practice and procedure, including the law of evidence. (Paras 32 to 34)

The operative principles for a fair trial permeate the common law in both civil and criminal contexts. Application of these principles involves a delicate judicial balancing of competing interests in a criminal trial: the interests of the accused and the public and to a great extent that of the victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences. (Para 30) . *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367: (2006) 2 KLT 350: 2006 Cri LJ 1694.

Bench Strength **2**. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 8-3-2006]

[**Ed.**: *See also* Shortnote F in *Zahira (1) case*, (2004) 4 SCC 158.]

JUVENILE JUSTICE

1. JUVENILE JUSTICE ACT, 1986

— Ss. 2(h) and 32 *See* CRIMINAL TRIAL — 'Juvenile/Child accused', (2006) 5 SCC 584; (2006) 9 SCC 428

See also EVIDENCE ACT, 1872, S. 35, (2006) 5 SCC 584

— S. 32 *See* EVIDENCE ACT, 1872, S. 35, (2006) 5 SCC 584

— Ss. 32 and 2(h) *See* CRIMINAL TRIAL — 'Juvenile/Child accused', (2006) 9 SCC 603

2. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000

— Ss. 2(k) and 49 *See* CRIMINAL TRIAL — 'Juvenile/Child accused', (2006) 5 SCC 584; (2006) 9 SCC 428

See also EVIDENCE ACT, 1872, S. 35, (2006) 5 SCC 584

[502] — Ss. 20, 2(k) & 49 — Procedure prescribed under S. 20 for trials and appeals pending on the date of coming into force of the 2000 Act i.e. 1-4-2001 — Applicability of — *Conviction of appellants, who were juveniles under the 2000 Act on the date of occurrence i.e. 12-11-2001, by Sessions Judge/Special Judge and confirmed in appeal by High Court — Challenge to, before Supreme Court — On facts, held, the same procedure as prescribed under S. 20 for pending trials and appeals should be followed in the instant case — Hence, appeals remitted to Juvenile Justice Board to pass appropriate orders under the 2000 Act as if it had been satisfied on inquiry under the Act that the appellants had committed the offences — Sentences set aside, subject to such orders as may be passed by the Juvenile Justice Board* (Paras 5, 7 and 8). *Amit Singh* v. *State of U.P.*, (2006) 9 SCC 522: (2006) 2 SCC (Cri) 538.

Bench Strength **2**. Coram: *B.P. Singh* and *R.V. Raveendran*, JJ. [Date of decision: 25-11-2005]

JUVENILE/CHILD ACCUSED

See CRIMINAL TRIAL

KARNATAKA PREVENTION OF DANGEROUS ACTIVITIES OF BOOTLEGGERS, DRUG-OFFENDERS, GAMBLERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS AND SLUM-GRABBERS ACT, 1985 (12 OF 1985)

See PREVENTIVE DETENTION — 'Particular Statutes'

KERALA INTERPRETATION AND GENERAL CLAUSES ACT, 1925 (7 OF 1925)

See GENERAL CLAUSES ACTS

KIDNAPPING

See CRIMES AGAINST WOMEN AND CHILDREN

LAST SEEN TOGETHER

See CRIMINAL TRIAL — 'Circumstantial evidence'

LAW OFFICERS

See also ADMINISTRATIVE LAW — 'Government departments/PSUs'

See also PUBLIC ACCOUNTABILITY AND VIGILANCE — 'Government departments/PSUs'

LEGAL FICTION

See also ADMINISTRATIVE LAW — 'Subordinate/Delegated legislation'

See also CRIMINAL TRIAL

See also STATUTE LAW

LEGIBILITY OF DOCUMENTS

See PREVENTIVE DETENTION — 'Communication of grounds of detention'

LIFE SENTENCE

See CRIMINAL TRIAL — 'Sentence'

LIMITATION

1. GENERALLY

See PRACTICE AND PROCEDURE — 'Mixed question of fact and law', (2005) 13 SCC 381

2. LIMITATION ACT, 1963

— S. 12(1) *See* NEGOTIABLE INSTRUMENTS ACT, 1881, Ss. 138 & 142(b), (2006) 9 SCC 340

MADRAS VILLAGE POLICE REGULATIONS, 1816

See POLICE

MADRAS VILLAGE POLICE REGULATIONS, 1821

See POLICE

MAHARASHTRA CONTROL OF ORGANISED CRIMES ACT, 1999 (30 OF 1999)

See CRIMINAL LAW — 'Particular Statutes'

MALA FIDES

[503] — Pleading and particulars in respect of — Requirements of, reiterated

A plea of mala fides has not only to be clearly pleaded but specifically proved by adducing cogent evidence. Mere allegations and suspicions would not be sufficient. In the present case the person to whom mala fide conduct is attributed is interestingly not a party in the proceedings. (Para 61). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

MAXIMS

— Ignorentia juris non excusal *See* CONSTITUTION OF INDIA — 'Article 136' — Scope of interference — General rule of non-interference, Arts. 136 and 141, (2005) 13 SCC 552

— Nemo dat quod non habet — Applicability *See* PROPERTY LAW — 'Ownership and Title', (2005) 13 SCC 686

— Quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest *See* CRIMINAL PROCEDURE CODE, 1973, S. 482, (2006) 4 SCC 359

— Res ipsa loquitur *See* LABOUR LAW — 'Departmental/Domestic enquiry' — Enquiry procedure, (2006) 8 SCC 52

MEDIA LAWS

PRESS COUNCIL ACT, 1978

— Ss. 13(2)(c), 14(1) & (2) — Protection of minors/children from harmful and disturbing materials — Sufficiency of provisions under — Proposal for amendment of S. 14 so as to give Council more teeth — Necessity of Govt. to consider seriously *See* CONSTITUTION OF INDIA — 'Article 19' — Article 19(1)(a) — Freedom of Press, Arts. 19(1)(a) & (2), (2007) 1 SCC 143

MEDICAL JURISPRUDENCE

See also CRIMINAL TRIAL

1. BALLISTICS

— Air gun — Injury caused by resulting in death — Proof of *See* CRIMINAL TRIAL — 'Wounds and Weapons', (2006) 1 SCC 714

2. DNA TEST

See FAMILY LAW — 'Parentage', (2006) 9 SCC 363

3. RAPE

See PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Appreciation of evidence, Ss. 375 and 376, (2006) 10 SCC 534

MINIMUM STATUTORY SENTENCE

See CRIMINAL TRIAL — 'Sentence'

MITIGATING CIRCUMSTANCES OR FACTORS

See CRIMINAL TRIAL — 'Sentence'

MOTIVE

See also CRIMINAL TRIAL — 'Circumstantial evidence'

MOTOR INSURANCE

See INSURANCE

MOTOR VEHICLES

Synopsis

1. Generally
2. Insurance
3. Motor Vehicles Act, 1939
4. Motor Vehicles Act, 1988

1. GENERALLY

— Compensation — Fatal motor accident *See* 'Motor Vehicles Act, 1988', S. 168, below, (2006) 3 SCC 242; S. 168 and Sch. II, below, (2006) 6 SCC 249

2. INSURANCE

— Motor insurance — Insurer's liability *See* 'Motor Vehicles Act, 1988', Ss. 149(2), 147, 3, 163-A, 166 and 170, (2006) 4 SCC 250

3. MOTOR VEHICLES ACT, 1939

[504] **— S. 95(2) — "Act-only" policy — Liability of the Insurance Company in respect of — Insured vehicle whether a taxi** — *In earlier decision in* Jameskutty (1), *(2003) 7 SCC 131, Supreme Court ruling against respondent Insurance Company since there was no material before it to show that the vehicle insured was a taxi and not a private vehicle — Supreme Court thereafter permitting Insurance Company to reopen matter — On basis of materials now placed before Supreme Court held, setting aside* Jameskutty (1), *that insured vehicle is a "motor cab" which was being used for hire or reward and was thus covered by S. 95(2)(b)(i), which prescribes limited liability of Rs 50,000 — Hence High Court's impugned judgment restricting liability of Insurance Company to Rs 50,000, upheld* (Para 8). *Jameskutty Jacob (2)* v. *United India Insurance Co.*, (2006) 3 SCC 750: (2006) 2 SCC (Cri) 114.

Bench Strength **2**. Coram: **B.P. Singh** and *Altamas Kabir*, JJ. [Date of decision: 21-3-2006]

Jameskutty Jacob (1) v. United India Insurance Co. Ltd., (2003) 7 SCC 131: 2003 SCC (Cri) 1720, reversed

— S. 103-A *See* 'Motor Vehicles Act, 1988', S. 157, below, (2006) 4 SCC 404

4. MOTOR VEHICLES ACT, 1988

[505] **— Ss. 140(1), (2) & (5) — Compensation — Quantum of** — *Appellant claimant suffering 20% permanent disability as a result of a motor accident — As against Rs 2,50,000 claimed by him, Tribunal awarding Rs 33,000 with interest at 6% p.a. which was enhanced to Rs 52,000 by the High Court — Considering the fact that the major claim was for permanent disability which was certified to be 20% and his income was Rs 300 per month, held, no interference with High Court's award called for* (Paras 3, 4 and 5). *Raju* v. *J.M. Richard*, (2006) 9 SCC 675: (2006) 3 SCC (Cri) 360.

Bench Strength **2**. Coram: *B.N. Srikrishna* and *Lokeshwar Singh Panta*, JJ. [Date of decision: 15-2-2006]

[506] **— S. 147 — Third-party risk — Liability of insurer to pay compensation under S. 147 — Extent of — Risk of death or injury to gratuitous passenger carried in a private vehicle, if covered** — *Held, an insurance policy under S. 147 does not cover such a risk*

The question that arose before the Supreme Court was whether a statutory insurance policy under the Motor Vehicles Act, 1988 intended to cover the risk to life or damage to properties of third parties, would cover the risk of death or injury to a gratuitous passenger carried in a private vehicle.

Answering the question in the negative and allowing the appeal,

Held :

Although the observations made in *Asha Rani case*, (2003) 2 SCC 223, were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus the appellant Insurance Company owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger. Even under the 1939 Act the established legal position was that unless there was a specific coverage of the risk pertaining to a gratuitous passenger in the policy, the insurer was not liable. Section 95(1) proviso (*ii*) has been eliminated while drafting Section 147 of the 1988 Act. (Paras 21 and 18). *United India Insurance Co. Ltd.* v. *Tilak Singh*, (2006) 4 SCC 404: (2006) 2 SCC (Cri) 344: AIR 2006 SC 1576: (2006) 2 KLT 884.

Bench Strength **2**. Coram: **B.N. Srikrishna** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 4-4-2006]

New India Assurance Co. v. Satpal Singh, (2000) 1 SCC 237: 2000 SCC (Cri) 130, held, overruled

[507] — Ss. 149(2), 147, 3, 163-A, 166 and 170 — Insurer's liability — Third party — Defences available to insurer — *Commercial vehicle driven by a person not possessing appropriate licence therefor, meeting with an accident which resulting in death of a minor girl — In such circumstances, held, the insurer could rightly set up the defence of breach of condition of the insurance contract — High Court and Accident Claims Tribunal erred in holding otherwise and saddling the insurer with liability — However, in the peculiar facts and circumstances of the case viz. age of the victim (12 years in this case), poor background of the claimants, non-appearance of the owner of vehicle and the difficulty likely to be faced by the claimants in securing his presence, interference under Art. 136 with the impugned order declined but liberty granted to the insurer to recover the amount from the owner of the vehicle in the manner as directed in* Nanjappan case, *(2004) 13 SCC 224*

Respondent 3 herein was the owner of a jeep which was admittedly used as a taxi and was, thus, a commercial vehicle. One *R*, who had a licence to drive a light motor vehicle only, was driving the said vehicle when the same met with an accident resulting in the death of a 12 years old girl. Respondents 1 and 2 herein then filed a claim petition under the Motor Vehicles Act, 1988 (for short "the Act"). The insurer, appellant herein, raised the question of non-possession of a licence by *R* to drive a commercial vehicle but the Accident Claims Tribunal and the High Court held the insurer to be liable to discharge the third-party liability with liberty to initiate appropriate proceedings against the owner for refund of the amount paid by the insurer. The insurer then filed the present appeal by special leave.

Before the Supreme Court, the appellant insurer contended that violation of terms and conditions of the contract of insurance was a defence available to the insurer in terms of Section 149(2) of the Act.

On the other hand, the respondents pleaded that the insurer should pay the award amount and recover the same from the owner of the vehicle.

Clarifying the legal position but in the peculiar facts and circumstances of the case, dismissing the appeal,

Held :

In a proceeding arising out of a claim petition filed under Section 166 of the Motor Vehicles Act, the Insurance Company is a necessary party as it is required to indemnify the owner or driver of the vehicle. In the circumstances mentioned in Section 170 of the Act, the Insurance Company can contest the matter on merits of the claim petition upon obtaining leave of the court. However, there does not exist any embargo in raising a defence which comes within the purview of Section 149(2) of the Act. (Para 10)

The vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle, thus, was required to hold an appropriate licence therefor. *R* who was driving the said vehicle at the relevant time, did not possess any licence to drive a commercial vehicle. Evidently, therefore, there was a breach of the condition of the contract of insurance. The appellant, therefore, could raise the said defence. (Para 11)

In such a case, the owner of a vehicle could not contend that he had no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not. However, in the present case, the owner did not appear. The victim was aged only 12 years. The claimants are from a poor background. They must have suffered great mental agony. Therefore, it may not be appropriate to push them into another round of litigation particularly when it might be difficult for them to secure the presence of the owner of the vehicle. Thus, although holding that the appellant was not liable to pay the claimed amount as the driver was not possessing a valid licence and that the High Court was in error in holding otherwise, it would be appropriate in the peculiar facts and circumstances of the case, to decline interference with the impugned award, in exercise of the jurisdiction under Article 136 of the Constitution but it is also directed that the appellant

may recover the amount from the owner in the same manner as was directed in *Nanjappan case*, (2004) 13 SCC 224. (Paras 17 and 19). *National Insurance Co. Ltd.* v. *Kusum Rai*, (2006) 4 SCC 250: (2006) 2 SCC (Cri) 214: (2006) 2 CPJ 8 (SC): (2006) 2 KLT 300.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 24-3-2006]

New India Assurance Co. v. Kamla, (2001) 4 SCC 342: 2001 SCC (Cri) 701, considered

[508] — S. 149(2)(a)(ii) — Breach of — Where licence of driver subsequently found to be discrepant, S. 149(2)(a)(ii) not necessarily breached — *Prior to appointing of the driver as such, owner of the vehicle having seen and examined his driving licence and, after taking the test of his driving, having found him competent to drive the vehicle — Insurer not proving that the owner of the vehicle was negligent and had failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver — In such circumstances, notwithstanding that the licence of the said driver was later found not to have been issued by the licensing authority of the place concerned, held, there was no breach of S. 149(2)(a)(ii) — Hence, insurer not entitled to recover the amount of compensation paid by it for the motor accident caused by such driver*

The appellant was the owner of a truck and the respondent was the insurer thereof. The vehicle met with an accident. The Claims Tribunal awarded compensation to the claimants in a certain amount. The Tribunal held that the accident had taken place due to rash and negligent driving by the driver and that the appellant owner had not committed any breach of the terms and conditions of the insurance policy and that the Insurance Company was liable to make the payment of compensation amount to the claimants. Modifying the order of the Tribunal, the High Court held that the Insurance Company was entitled to recover the amount of compensation from the owner of the offending truck as per the law laid down in *Kamla case*, (2001) 4 SCC 342. The High Court also held that the appellant had contravened the terms and conditions of the insurance policy as the driving licence was not issued by the licensing authority for the place concerned. The owner of the truck then filed the present appeal by special leave.

Before the Supreme Court, the appellant owner of the truck contended, inter alia, that he had taken adequate care and caution to verify the genuineness of the licence of the driver. That there was no evidence that the appellant had knowledge that the driver was not holding a valid driving licence.

On the other hand, the respondent supported the impugned order of the High Court.

Allowing the appeal,

Held :

Evidence on record shows that the appellant owner had not only seen and examined the driving licence produced by the driver but had also taken the test of the driving of the driver and found that the driver was competent to drive the vehicle and thereafter appointed him as driver of the vehicle in question. Thus, the owner having satisfied himself that the driver had a licence and was driving competently, there was no breach of Section 149(2)(*a*)(*ii*) and the Insurance Company would not be absolved of its liability. (Paras 9 and 6)

Moreover, the Insurance Company had to prove that the insured, namely, the owner of the vehicle, was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant point of time. Therefore, in the present case, the appellant owner of the vehicle is absolved of any liability as ordered by the High Court. (Paras 11 and 12). *Lal Chand* v. *Oriental Insurance Co. Ltd.*, (2006) 7 SCC 318: (2006) 3 SCC (Cri) 266: (2006) 4 KLT 17.

Bench Strength **2**. Coram: **Dr. Ar. Lakshmanan** and *Tarun Chatterjee*, JJ. [Date of decision: 22-8-2006]

United India Insurance Co. Ltd. v. Lehru, (2003) 3 SCC 338: 2003 SCC (Cri) 614; National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297: 2004 SCC (Cri) 733, followed

[509] — S. 157 — Transfer of insurance policy covering vehicle on transfer of vehicle — Transfer of rights and obligations under the policy — Provisions in respect of — Failure to give intimation to insurer about transfer of vehicle — Position under S. 157, 1988 Act and S. 103-A, MV Act, 1939 compared — *Effect of repeal of MV Act, 1939 and S. 6(c), General Clauses Act, 1897, explained — Held, under either Act, liability of the insurer did not cease as far as a third party is concerned if insurer was not intimated of transfer of vehicle — Motor Vehicles Act, 1939, S. 103-A*

Undoubtedly, under Section 103-A of the 1939 Act, if there was in existence an insurance policy covering the vehicle and the vehicle was transferred, then there was no automatic transfer of policy of insurance but it was open to the transferor to apply in the prescribed form to the insurer for transfer of certificate of insurance before the transfer and, if within 15 days of receipt of such application by the insurer such application had not been refused, the certificate of insurance and the insurance policy, were deemed to have been transferred in favour of the transferee. The 1988 Act, however, brought about a drastic change in the situation. Section 157 of the 1988 Act, which cor-

responds to the earlier Section 103-A of the 1939 Act, provides that upon the transfer of ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate "shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer". The explanation to the section makes it clear that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance. (Para 6)

Section 6(*c*) of the General Clauses Act would hardly have any application to a cause of action in favour of a person who was neither a transferor, nor the transferee of the insured vehicle. At the most, the failure to give an intimation under Section 103-A of the 1939 Act would create a liability on the part of the transferor vis-à-vis the Insurance Company, but would hardly affect a third party's claim for compensation. (Para 8)

The liability of an insurer under Section 103-A of the 1939 Act did not cease even if the owner or purchaser fails to give intimation of transfer to the Insurance Company, as the purpose of the legislation was to protect the rights and interests of the third party. Thus the situation in law which arises from the failure of the transferor to notify the insurer of the fact of transfer of ownership of the insured vehicle is no different, whether under Section 103-A of the 1939 Act or under Section 157 of the 1988 Act insofar as the liability towards a third party is concerned. Thus, whether the old Act applies to the facts of the present case or the new Act applies, as far as the deceased third party was concerned, the result would not be different. (Paras 12 and 13). *United India Insurance Co. Ltd.* v. *Tilak Singh*, (2006) 4 SCC 404: (2006) 2 SCC (Cri) 344: AIR 2006 SC 1576: (2006) 2 KLT 884.

Bench Strength **2**. Coram: **B.N. Srikrishna** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 4-4-2006]

Complete Insulations (P) Ltd. v. New India Assurance Co. Ltd., (1996) 1 SCC 221; New India Assurance Co. Ltd. v. Sheela Rani, (1998) 6 SCC 599: 1999 SCC (Cri) 174; G. Govindan v. New India Assurance Co. Ltd., (1999) 3 SCC 754: 1999 SCC (Cri) 483; Rikhi Ram v. Sukhrania, (2003) 3 SCC 97: 2003 SCC (Cri) 735, followed

Madineni Kondaiah v. Yaseen Fatima, AIR 1986 AP 62: (1986) 60 Comp Cas 762 (FB), held approved

[510] — Ss. 166 and 173 — Award of compensation — When warranted — Contributory negligence of victim — Cent per cent negligence of victim — *Victim riding bicycle in rash and negligent manner, hitting stationary bus, getting knocked down and suffering skull injuries resulting in his death — Held, entire fault of accident lay with victim — Hence, Tribunal and High Court rightly dismissed claim petition. Mohd. Hanif* v. *H.P. Road Transport Corpn.*, (2005) 13 SCC 694: (2006) 2 SCC (Cri) 293.

Bench Strength **2**. Coram: *B.P. Singh* and *P.K. Balasubramanyan*, JJ. [Date of decision: 29-11-2005]

[511] — Ss. 166 and 217 — Application for compensation — Event that furnishes cause of action — Applicability of 1988 Act or 1939 Act — *Held, it is not transfer of vehicle but the accident which furnishes the cause of action for the application before the Tribunal — Accident in present case having taken place after commencement of 1988 Act, it is 1988 Act which would govern the case*

It is not the transfer of the vehicle but the accident which furnishes the cause of action for the application before the tribunal. Undoubtedly, the accident took place after the 1988 Act had come into force. Hence it is the 1988 Act which would govern the situation. (Para 13). *United India Insurance Co. Ltd.* v. *Tilak Singh*, (2006) 4 SCC 404: (2006) 2 SCC (Cri) 344: AIR 2006 SC 1576: (2006) 2 KLT 884.

Bench Strength **2**. Coram: **B.N. Srikrishna** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 4-4-2006]

Tilak Singh v. United Insurance Co. Ltd., (1998) 2 Shim LC 352 (HP), reversed

[512] — S. 168 — Fatal motor accident — Compensation — Deprivation of love and affection — *Rs 20,000 awarded by Tribunal in respect of the same, upheld — Tort Law — Damages/Compensation — Deprivation of love and affection — Rs 20,000 awarded by Tribunal in respect of the same, upheld* (Para 14). *U.P. SRTC* v. *Krishna Bala*, (2006) 6 SCC 249: (2006) 3 SCC (Cri) 90: AIR 2006 SC 2688.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 13-7-2006]

[513] — S. 168 — Fatal motor accident — Compensation — Determination of — Dependency of dependants of victim — Determination of — Evidence to be led/materials to be placed before Tribunal — *Held, in present case the dependency would have to be worked on basis of earnings of deceased at the time of accident — Mere assertion of claimants that he would have earned certain sums in the span of his lifetime cannot be accepted as legitimate unless all relevant facts are proved by leading cogent and reliable evidence before Tribunal — Various facts that could support such a claim, discussed — Fatal Accidents Act, 1855, S. 1-A*

The compensation should be the pecuniary loss to the dependants by the death of a person concerned. While calculating the compensation, annual dependency of the dependants should be determined in terms of the annual loss, according to them, due to the abrupt termination of life. To determine the quantum of compensation, the earnings of the deceased at the time of

the accident and the amount, which the deceased was spending for the dependants, are the basic determinative factors. The resultant figure should then be multiplied by a "multiplier". The multiplier is applied not for the entire span of life of a person, but it is applied taking into consideration the imponderables in life, immediate availability of the amount to the dependants, the expectancy of the period of dependency of the claimants and so many other factors. Contribution towards the expenses of the family, naturally is in proportion to one's earning capacity. (Para 8)

In the present case, the earning of the deceased and consequently the amount which he was spending over the members of his family i.e. dependency is to be worked out on the basis of the earnings of the deceased at the time of the accident. The mere assertion of the claimants that the deceased would have earned more than Rs 8000 to Rs 10,000 per month in the span of his lifetime cannot be accepted as legitimate income unless all the relevant facts are proved by leading cogent and reliable evidence before the Tribunal. The claimants have to prove that the deceased was in a trade where he would have earned more from time to time or that he had special merits or qualifications or opportunities which would have led to an improvement in his income. There is no evidence produced on record by the claimants regarding future prospects of increase of income in the course of employment or business or profession, as the case may be. It is stated that the deceased was about 24 years old at the time of the accident. the Tribunal has accepted Rs 4000 per month, as the earning of the deceased and after deducting Rs 400 per month for his pocket expenses, the remaining sum of Rs 3600 has been divided into three equal shares, out of which two shares i.e. Rs 2400 per month or Rs 28,800 per annum were assessed as loss to both the claimants, who were the parents of the deceased. The ages of the claimants are stated to be between 45 and 50 years and accordingly multiplier of 12 was applied. Thus, a sum of Rs 28,800 x 12 = Rs 3,45,600 was awarded as compensation. In addition thereto, a sum of Rs 2000 has been given for funeral expenses and a further amount of Rs 6000 under the head "Loss of estate". The total sum awardable is Rs 3,53,600 but since the deceased was held liable for contributory negligence, the liability of the insurer with whom the bus in question was insured is fixed at 50% i.e. to the extent of Rs 1,76,800 with interest at the rate of 10% per annum from the date of the filing of the claim application till the date of payment. The deceased, a young boy who was 24 years old, was unmarried and the claimants were his father and mother, the dependency has to be calculated on the basis that within two or three years the deceased would have married and raised family and the monthly allowance he was giving to his parents would have been cut down. Thus, in our view the Tribunal has awarded just and reasonable compensation to the claimants. (Para 8). *Bijoy Kumar Dugar* v. *Bidya Dhar Dutta*, (2006) 3 SCC 242: (2006) 2 SCC (Cri) 81: AIR 2006 SC 1255: (2006) 4 Mah LJ 178: (2006) 3 MPLJ 22.

Bench Strength **2**. Coram: *B.N. Srikrishna* and **Lokeshwar Singh Panta**, JJ. [Date of decision: 1-3-2006]

G.M., Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176: 1994 SCC (Cri) 335; Sarla Dixit v. Balwant Yadav, (1996) 3 SCC 179, relied on and distinguished on facts

[514] — S. 168 — Fatal motor accident — Compensation — Measure of damages — Contributory negligence — Effect — Inference of contributory negligence, if justified on facts — *Head-on collision of motor car being driven by deceased with a bus, even though it coming on record that it had been observed from the car that the bus was being driven in abnormal, zigzag fashion — Inference that head-on collision implied contributory negligence, while a knocking on the side would have implied negligence and rashness only on part of the bus — Sustainability — Held, deduction of fifty per cent damages on said inference of contributory negligence by Tribunal is sustainable, for it was natural for deceased, as a prudent man, once having observed abnormal driving of bus from afar, to have taken due care and precaution to avoid a head-on collision — Tort Law — Negligence — Defences*

An accident took place wherein two vehicles, namely, a Maruti car and a bus were involved in a head-on collision. *R*, son of A-1, the owner of the Maruti car, died in the accident on the spot. R-1 was the owner of the bus and *A*, R-2, was driving the offending bus, when it met with an accident. The bus was insured with the Oriental Insurance Company Limited, R-3. The car of the deceased was not insured as he had purchased it hardly a day or two before the accident. The appellant and his wife (now dead) (parents) were the original claimants before the Motor Accidents Claims Tribunal. They claimed a sum of Rs 25 lakhs as compensation from the respondents. The Tribunal, relying upon the evidence and other material on record, came to the conclusion that the deceased *R* and R-2, the driver, both were driving their respective vehicles in a rash and negligent manner and the accident was as a result of their contributory negligence for which the insurer Respondent 3 was liable to pay half of the amount of compensation i.e. Rs 1,76,800, to the claimants. It also directed that the amount of compensation as awarded be paid with interest at the rate of 10% per annum from the date of filing of the claim petition till payment.

Held :

The compensation should be the pecuniary loss to the dependants by the death of a person concerned. While calculating the compensation, annual dependency of the dependants should be determined in terms of the annual loss, according to them, due to the abrupt termination of life. To determine the quantum of compensation, the earnings of the deceased at the time of the accident and the amount, which the deceased was spending for the dependants, are the basic determinative factors. The resultant figure should then be multiplied by a "multiplier". The multiplier is applied not for the entire span of life of a person, but it is applied taking into consideration the imponderables in life, immediate availability of the amount to the dependants, the expectancy of the period of dependency of the claimants and so many other factors. Contribution towards the expenses of the family, naturally is in proportion to one's earning capacity. (Para 8)

Further, as far as the finding on contributory negligence is concerned, it is the evidence of PW 2 who was travelling in the Maruti car along with the deceased, *R* on the day of the accident that he also suffered some injuries in the said accident. He stated that before the accident, *R* noticed a passenger bus coming from the opposite direction and the movement of the bus was not normal as it was coming in a zigzag manner. The Maruti car being driven by the deceased *R* and the offending bus had a head-on collision. The Tribunal has not accepted the evidence of PW 2 to prove that the driver of the offending bus was driving the vehicle at abnormal speed. If the bus was being driven by the driver abnormally in a zigzag manner, as PW 2 wanted the Tribunal to believe, it was but natural, as a prudent man, for the deceased to have taken due care and precaution to avoid head-on collision when he had already seen the bus coming from the opposite direction from a long distance. It was a head-on collision in which both the vehicles were damaged and, unfortunately, *R* died on the spot. The Tribunal has rightly observed that had the knocking been on one side of the car, the negligence or rashness could have been wholly fastened or attributable to the driver of the bus, but when the vehicles had a head-on collision, the drivers of both the vehicles should be held responsible to have contributed equally to the accident. The finding on this issue is a finding of fact and there is no cogent and convincing reason to disagree with the well-reasoned order of the Tribunal on tnis point. The Tribunal has awarded interest at the rate of 10% per annum on the amount of compensation from the date of filing of the claim application till the date of payment. It is a discretionary relief granted by the Tribunal and the discretion exercised by the Tribunal cannot be said to be inadequate and inappropriate. (Para 12)

Hence, the appeal filed by the claimants for enhancement of compensation stands dismissed. (Para 13). *Bijoy Kumar Dugar* v. *Bidya Dhar Dutta*, (2006) 3 SCC 242: (2006) 2 SCC (Cri) 81: AIR 2006 SC 1255: (2006) 4 Mah LJ 178: (2006) 3 MPLJ 22.

Bench Strength **2**. Coram: *B.N. Srikrishna* and **Lokeshwar Singh Panta**, JJ. [Date of decision: 1-3-2006]

G.M., Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176: 1994 SCC (Cri) 335; Sarla Dixit v. Balwant Yadav, (1996) 3 SCC 179, relied on and distinguished on facts

[515] — S. 168 — Fatal motor accident — Compensation — Measure of damages — Factors to be considered — Multiplier method — Determination of multiplier — Factors to be considered — Reiterated — *Deceased being young and of marriageable age supporting both parents — Likely reduction in support to the parents on his marriage to be expected soon, had deceased survived, as a factor to be considered, laid down — Fatal Accidents Act, 1855, S. 1-A — Tort Law — Damages/Compensation*

The compensation should be the pecuniary loss to the dependants by the death of a person concerned. While calculating the compensation, annual dependency of the dependants should be determined in terms of the annual loss, according to them, due to the abrupt termination of life. To determine the quantum of compensation, the earnings of the deceased at the time of the accident and the amount, which the deceased was spending for the dependants, are the basic determinative factors. The resultant figure should then be multiplied by a "multiplier". The multiplier is applied not for the entire span of life of a person, but it is applied taking into consideration the imponderables in life, immediate availability of the amount to the dependants, the expectancy of the period of dependency of the claimants and so many other factors. Contribution towards the expenses of the family, naturally is in proportion to one's earning capacity. (Para 8). *Bijoy Kumar Dugar* v. *Bidya Dhar Dutta*, (2006) 3 SCC 242: (2006) 2 SCC (Cri) 81: AIR 2006 SC 1255: (2006) 4 Mah LJ 178: (2006) 3 MPLJ 22.

Bench Strength **2**. Coram: *B.N. Srikrishna* and **Lokeshwar Singh Panta**, JJ. [Date of decision: 1-3-2006]

G.M., Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176: 1994 SCC (Cri) 335; Sarla Dixit v. Balwant Yadav, (1996) 3 SCC 179, relied on and distinguished on facts

[516] — S. 168 and Sch. II — Fatal motor accident — Compensation — Multiplier method — Determination of multiplier, explained — Factors to be considered, enumerated — Rule stated in *Halsbury*, relied on — Role of Sch. II to MV Act, 1988 in — *Age of deceased/victim, prevailing rate of interest in economy, quantum and nature of income —*

Age groups for which highest and lowest multipliers to be applied, laid down — Held, Sch. II of Act is to serve as a guide, but cannot be said to be an invariable ready reckoner — In present case, victim being 36 years old, held, multiplier of 13 and not 22, appropriate — Quantum of compensation reduced to about Rs 3 lakhs instead of about Rs 6 lakhs awarded by Tribunal — Interest on said sum reduced to 9 per cent from 12 per cent awarded by Tribunal — Fatal Accidents Act, 1855, S. 1-A — Tort Law — Damages/Compensation

Age of the deceased was around 36 years and he was earning monthly salary of Rs 2300 per month. Though claim of agricultural income was made, the Tribunal did not accept the same. It adopted multiplier of 22 on the ground that the deceased had 22 years of service left. It was further noted that thereafter the deceased would have got pension. The widow of the deceased and children were awarded Rs 20,000 towards love and affection, and Rs 5000 for funeral rites. After adopting a multiplier of 22 the amount was fixed at Rs 6,07,200. After taking note of personal expenses the loss of dependency was fixed at Rs 1600 per month. In addition, interest at the rate of 12% was granted from the date of application.

Allowing the appeal in the terms below

Held :

In a fatal accident action, the accepted measure of damages awarded to the dependants is the pecuniary loss suffered by them as a result of the death. (Para 6)

The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants, whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed over the period for which the dependency is expected to last. (Para 8)

The multiplier is to be adopted taking note of the prevalent banking rate of interest. As the interest rate is on the decline, the multiplier has to consequentially be raised. (Paras 12 and 13)

The Second Schedule to the Motor Vehicles Act, 1988 suffers from many defects. The same is to serve as a guide, but cannot be said to be an invariable ready reckoner. However, the appropriate highest multiplier has been held to be 18. The highest multiplier has to be for the age group of 21 years to 25 years when an ordinary Indian citizen starts independently earning and the lowest would be in respect of a person in the age group of 60 to 70, which is the normal retirement age. (Para 13)

Hence the multiplier as adopted by the Tribunal and maintained by the High Court is clearly indefensible. Considering the age of the deceased the aforesaid multiplier would be 13. Calculated on that basis by taking monthly loss of dependency at Rs 2000 (after adjusting for personal expenses and likelihood of increase in salary) the compensation to be awarded would be Rs 3,12,000. To the aforesaid sum would be added Rs 25,000 awarded by the Tribunal for deprivation of love and affection and funeral expenses and, therefore, entitlement of the claimants is Rs 3,37,000. The accident took place on 29-11-1990. Therefore, the rate of interest would be 9% from the date of filing of the claim petition. The claimants would be entitled accordingly. (Para 14). *U.P. SRTC* v. *Krishna Bala*, (2006) 6 SCC 249: (2006) 3 SCC (Cri) 90: AIR 2006 SC 2688.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 13-7-2006]

Municipal Corpn. of Delhi v. Subhagwanti, (1966) 3 SCR 649: AIR 1966 SC 1750; Davies v. Powell Duffryn Associated Collieries Ltd., (1942) 1 All ER 657: 1942 AC 601 (HL); Nance v. British Columbia Electric Rly. Co. Ltd., (1951) 2 All ER 448: 1951 AC 601 (PC); Mallett v. McMonagle, (1969) 2 All ER 178: 1970 AC 166: (1969) 2 WLR 767 (HL); G.M., Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176: 1994 SCC (Cri) 335; U.P. SRTC v. Trilok Chandra, (1996) 4 SCC 362; New India Assurance Co. Ltd. v. Charlie, (2005) 10 SCC 720: 2005 SCC (Cri) 1657, followed

[517] — **Ss. 173, 170 and 149(2) — Appeal by insurer — Grounds available** — *Held, following* Sadhana Lodh case, *(2003) 3 SCC 524, that unless leave has been obtained by insurer under S. 170, only grounds available to insurer in appeal under S. 173 are those specified in S. 149(2) — The challenge cannot be enlarged by filing a petition under Arts. 226/227 of Constitution — In present case, writ petition being filed against award of Tribunal by insurer, challenging the grant of interest from the date of filing of claim petition on the compensation awarded — High Court allowing plea of insurer and reducing interest, to be calculated only from the date insurer was impleaded — Unsustainability — Held, High Court erred in doing so — Insurer not having obtained leave under S. 170, could not have raised any ground to challenge award of Tribunal other than those available to it under S. 149(2)*

The right of appeal is a statutory right to the parties and where the law provides a remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Articles 226/227 of the Constitution, on the premise that the insurer has limited grounds available for challenging

the award given by the Tribunal. Under Section 173 of the Act, an insurer has a right to file an appeal before the High Court on limited grounds available under Section 149(2). The appeal being a product of the statute it is not open to an insurer to take any plea other than those provided under Section 149(2) of the Act. However, in a situation where there is collusion between the claimant and the insurer or the insured does not contest the claim and further, if the Tribunal does not implead the Insurance Company to contest the claim, in such a situation it is open to the insurer to seek permission of the Tribunal [under Section 170] to contest the claim on the ground available to the insured or to a person against whom the claim has been made. If permission is granted and the insurer is allowed to contest the claim on merit, in that case it is open to the insurer to file an appeal against the award of the Tribunal on merits. Thus, in such a situation, the insurer can question the quantum of compensation awarded by the Tribunal. In the present case, the insurer made a challenge to the award of the Tribunal before the High Court in the writ petition on the ground of its liability to pay the interest on the amount of compensation for a specified period without obtaining the permission of the Tribunal as contemplated under the statute. Thus the writ petition filed by the Insurance Company was not maintainable against the order of the Tribunal awarding interest at the rate of 10% per annum on the amount of compensation from the date of the institution of the claim petition till the date of payment. (Paras 17 and 18). *Bijoy Kumar Dugar* v. *Bidya Dhar Dutta*, (2006) 3 SCC 242: (2006) 2 SCC (Cri) 81: AIR 2006 SC 1255: (2006) 4 Mah LJ 178: (2006) 3 MPLJ 22.

Bench Strength **2**. Coram: *B.N. Srikrishna* and **Lokeshwar Singh Panta**, JJ. [Date of decision: 1-3-2006]

Sadhana Lodh v. National Insurance Co. Ltd., (2003) 3 SCC 524: 2003 SCC (Cri) 762, followed

[**Ed.**: (1) *See also* recent discussion on grounds that may be taken in appeal by the insurer in (2006) 2 SCC 641, Shortnote C; (2) *See also* Art. 226, '(*d*)(3)(*ii*) By passing of statutory remedy', pp. 672 et seq. in Vol. 9, *Complete Digest of Supreme Court Cases*, 2nd Edn.]

MURDER

See CRIMINAL TRIAL — 'Appreciation of evidence'

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

See INTOXICANTS

NATIONAL SECURITY ACT, 1980

See PREVENTIVE DETENTION — 'Particular statutes'

NATURAL JUSTICE

See also ADMINISTRATIVE LAW

AUDI ALTERAM PARTEM

Right to hearing

See CRIMINAL PROCEDURE CODE, 1973, S. 439(2) and S. 437(5), (2005) 13 SCC 283

— Fair hearing — Inherence of in "due process" and the rule of law — Cardinality of in protection of human rights *See* CONSTITUTION OF INDIA — 'Article 21' — Fair and open trial, Arts. 21 and 14, (2006) 3 SCC 374

NEGLIGENCE

See TORT LAW

NEGOTIABLE INSTRUMENTS ACT, 1881

— Ss. 118, 139 & 138 *See* EVIDENCE ACT, 1872, Ss. 4, 114, 79 to 90-A, 111-A, 112, 113-A, 113-B and 114-A, (2006) 6 SCC 39

[518] — Ss. 118(a), 139 & 138 — Dishonour of cheque, a negotiable instrument — Presumptions under Ss. 118 and 139 as to issuance of the said instrument for consideration and in discharge of debt — Raising of — Rebuttal thereof — Burden of proof — Nature of said proof — *Held, initial burden of proof is on accused to rebut the said presumptions by raising a probable defence — If he discharges the said burden, the onus thereafter shifts on to the complainant to prove his case — Whether the initial burden has been discharged by accused is a question of fact — Burden of proof on accused is not heavy — He need not disprove the prosecution case in its entirety — He can discharge its burden on the basis of preponderance of probabilities through direct or circumstantial evidence — For said purpose, he can also rely upon evidence adduced by complainant — Appellant* ***P*** *doing share transactions through* ***R*** *(complainant), a sharebroker — Dishonour of cheque issued by* ***P*** *in favour of* ***R*** *due to insufficient funds in account — Complaint filed under S. 138 alleging that cheque was issued towards amount due to* ***R*** *in relation to share transactions — Defence taken that said cheque was given to* ***R*** *by way of loan to tide over his financial difficulties — Held, evidence adduced by parties showed that* ***P*** *succeeded in discharging his initial burden which then shifted to* ***R*** *who failed to discharge the same — Adverse inferences drawn against* ***R*** *due to non-production of his statutory books of accounts in relation to transactions in question, itself sufficient to rebut presumption under S. 118 — Therefore, conviction of* ***P*** *under S. 138, held, not sustainable — Evidence Act, 1872, Ss. 114 Ills. (c) & (g), 4, 3 and 101 to 103*

The second respondent was a member of Cochin Stock Exchange. The appellant used to carry on transactions in shares through the second respondent in the said Stock Exchange. A complaint petition was filed by the second respondent against the appellant purported to be for commission of an offence under

Section 138 of the Negotiable Instruments Act. It was alleged that a sum of Rs 3,00,033 was due to the second respondent from the appellant in relation to the said transactions. The appellant was said to have paid a sum of Rs 5000 in cash and issued a cheque for a sum of Rs 2,95,033. The said cheque, when presented for encashment, got dishonoured due to insufficient funds in the account of the appellant. The prosecution of the appellant was confined to the dishonour of the said cheque. Earlier also, the appellant had issued a blank cheque to the respondent which, when presented for encashment, was returned with the remarks "account closed". The appellant stated that the said cheque was given to Respondent 2 by way of security.

During the court proceedings, the appellant raised a plea that Respondent 2 was in dire financial assistance and the aforesaid cheque for a sum of Rs 2,95,033 was given by way of loan so as to enable him to tide over his difficulties. He also adduced his evidence before the trial court. The trial court opined that the appellant failed to discharge the onus placed on him in terms of Section 139 of the Negotiable Instruments Act. Thus, the trial court convicted and sentenced the appellant under Section 138 of the Negotiable Instruments Act. However, on an appeal preferred thereagainst by the appellant, the said judgment was set aside. The appellate court analysed the evidence and concluded that the explanation offered by the appellant was more probable. Thereafter, the complainant i.e. the second respondent filed a criminal appeal before the High Court which was allowed vide impugned judgment. Hence the present appeal.

Allowing the appeal and setting aside the conviction,

Held :

Presumptions both under Sections 118(*a*) and 139 of the Negotiable Instruments Act are rebuttable in nature. (Para 27)

In terms of Section 4 of the Evidence Act whenever it is provided by the Act that the court shall presume a fact, it shall regard such fact as proved unless and until it is disproved. The words "proved" and "disproved" have been defined in Section 3 of the Evidence Act. Applying the said definitions of "proved" or "disproved" to the principle behind Section 118(*a*) of the Negotiable Instruments Act, the court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon. It is not necessary for the defendant to disprove the existence of consideration by way of direct evidence. The standard of proof evidently is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on record but also by reference to the circumstances upon which the accused relies. The accused need not disprove the prosecution case in its entirety. Moreover, the onus on an accused is not as heavy as that of the prosecution. It may be compared with that on a defendant in a civil proceeding. (Paras 29 to 32, 38 and 45)

Thus, it was for the accused only to discharge the initial onus of proof. He was not necessarily required to disprove the prosecution case. Whether in the given facts and circumstances of a case the initial burden has been discharged by an accused would be a question of fact. It is a matter relating to appreciation of evidence. (Para 36)

The definite case of the second respondent was that the cheque dated 17-8-1992 was issued by the appellant in discharge of his debt. The said liability by way of debt arose in terms of the transactions. Two adverse inferences in the instant case are liable to be drawn against the second respondent i.e. (*i*) he deliberately has not produced his books of accounts, and (*ii*) he had not been maintaining the statutory books of accounts and other registers in terms of the Stock Exchange bye-laws. In *Kundan Lal Rallaram*, AIR 1961 SC 1316 it was held that if a relevant evidence is withheld, the court may draw a presumption to the effect that if the same was produced, it might have gone unfavourable to the plaintiff. Such a presumption was itself held to be sufficient to rebut the presumption arising under Section 118 of the NI Act. (Paras 35, 45 and 44)

The second respondent evidently had not been able to explain the discrepancies in his books of accounts. The evidence adduced by the parties before the trial court lead to one conclusion that the appellant had been able to discharge his initial burden. The burden thereafter shifted to the second respondent to prove his case. He failed to do so. Therefore, the impugned judgment cannot be sustained which is set aside accordingly. (Paras 25, 50 and 55). *M.S. Narayana Menon* v. *State of Kerala*, (2006) 6 SCC 39: (2006) 3 SCC (Cri) 30: (2006) 3 KLT 404: (2006) 5 Mah LJ 676: (2006) 4 MPLJ 97.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ.
[Date of decision: 4-7-2006]

G. Vasu v. Syed Yaseen Sifuddin Quadri, AIR 1987 AP 139: (1987) 1 An LT 1 (FB), approved

[519] — Ss. 118(a) and 138 & 139 — Presumption under, that negotiable instrument was drawn for "consideration" — Scope — *Held, court has to presume a negotiable instrument to be for consideration unless the existence of consideration is disproved — That is unless on consideration of matter before it the court either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist — Meaning of words "proved" and "disproved" as defined under the Evidence Act, applied in this regard — Evidence Act, 1872, Ss. 4, 3 & 114 Ill. (c) — Words and phrases — "Proved", "disproved"*

In terms of Section 4 of the Evidence Act whenever it is provided by the Act that the court shall presume a fact, it shall regard such fact as proved unless and until it is disproved. The words "proved" and "disproved" have been defined in Section 3 of the Evidence Act. Applying the said definitions of "proved" or "disproved" to the principle behind Section 118(*a*) of the Negotiable Instruments Act, the court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist.. *M.S. Narayana Menon* v. *State of Kerala*, (2006) 6 SCC 39: (2006) 3 SCC (Cri) 30: (2006) 3 KLT 404: (2006) 5 Mah LJ 676: (2006) 4 MPLJ 97.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 4-7-2006]

— S. 138 *See* CRIMINAL PROCEDURE CODE, 1973, S. 482, (2005) 13 SCC 705; (2005) 13 SCC 58

— S. 138 — Direction made to complainant to pay costs to accused where conviction under S. 138 not sustainable *See* PRACTICE AND PROCEDURE — 'Costs', (2006) 6 SCC 39

— S. 138 — Transfer of cases filed at numerous places to one common place — Consolidation of cases if envisaged *See* CRIMINAL PROCEDURE CODE, 1973, S. 406, (2005) 13 SCC 125

[520] — S. 138 — Object

The object of the provision of Section 138 of the NI Act is that for proper and smooth functioning of business transaction in particular, use of cheques as negotiable instruments would primarily depend upon the integrity and honesty of the parties. It was noticed that cheques used to be issued as a device *inter alia* for defrauding the creditors and stalling the payments. Dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. Remedy available in a civil court is a long-drawn process and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee. (Para 34). *Mosaraf Hossain Khan* v. *Bhagheeratha Engg. Ltd.*, (2006) 3 SCC 658: (2006) 2 SCC (Cri) 98: AIR 2006 SC 1288: 2006 Cri LJ 1683: (2006) 2 KLT 525.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 24-2-2006]

[521] — S. 138 — Conviction under — Imposition of fine — Sentence of imprisonment on failure to pay — Propriety — *Direction that in case the accused failed to pay any of the amounts of fine, he would undergo simple imprisonment for a period of three months on each count, held, was proper — There was nothing to show why a distinction should be made in case a fine is not paid in relation to offences under IPC vis-à-vis offence under S. 138 — Criminal Procedure Code, 1973, Ss. 30, 28 and 29* (Para 4). *Joseph Moolayil* v. *V.A. Chachko*, (2006) 9 SCC 165: (2006) 2 SCC (Cri) 352.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 23-11-2005]

[522] — S. 138 — Sentence of imprisonment in default of payment of fine — Imposition of — Challenge to, on ground that S. 138 does not provide for such sentence — *Respondents not disputing the said legal proposition — Hence, sentence in default set aside* (Paras 3 and 4). *P.T. Ratnakaran* v. *V.K. Prabhakaran*, (2006) 9 SCC 784: (2006) 3 SCC (Cri) 545.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 24-4-2006]

[523] — S. 138 and proviso (c) — Object of, considered

Section 138 of the Act was enacted to punish those unscrupulous persons who purported to discharge their liability by issuing cheques without really intending to do so, which was demonstrated by the fact that there was no sufficient balance in the account to discharge the liability. With a view to avoid unnecessary prosecution of an honest drawer of a cheque, or to give an opportunity to the drawer to make amends, the proviso to Section 138 provides that after dishonour of the cheque, the payee or the holder of the cheque in due course must give a written notice to the drawer to make good the payment. Clause (*c*) of proviso to Section 138 provides that the section shall not apply unless the drawer of the cheque fails to make the payment within 15 days of the receipt of the said notice. The proviso is meant to protect honest drawers whose cheques may have been dishonoured for the

fault of others, or who may have genuinely wanted to fulfil their promise but on account of inadvertence or negligence failed to make necessary arrangements for the payment of the cheque. The law treats such lapses induced by inadvertence or negligence to be pardonable, provided the drawer after notice makes amends and pays the amount within the prescribed period. The proviso is not meant to protect unscrupulous drawers who never intended to honour the cheques issued by them, it being a part of their modus operandi to cheat unsuspecting persons. (Para 13). *D. Vinod Shivappa* v. *Nanda Belliappa*, (2006) 6 SCC 456: (2006) 3 SCC (Cri) 114: AIR 2006 SC 2179: 2006 Cri LJ 2897: (2006) 130 DLT 534: (2006) 3 KLT 94.

Bench Strength **2**. Coram: **B.P. Singh** and *R.V. Raveendran*, JJ. [Date of decision: 25-5-2006]

[524] — Ss. 138 proviso (b), (c) and 142 — Deemed service of notice sent by registered post — Presumption of receipt of notice — When arises — Fraudulent avoidance of notice — Nature and proof — *Held, when drawer refuses to accept the notice or when he evades service of the notice by fraudulent or unscrupulous means so that the envelope containing the notice is returned with a false endorsement such as premises locked or addressee not available, court may presume receipt of the notice by the drawer — Whether service of notice was fraudulently avoided by the drawer is a question of fact to be determined by court on the basis of evidence on record — There is no fixed rule that whenever notice could not be served due to non-availability of the addressee, court would presume service of the notice — When respondent drawee of the cheque issued notice to appellant drawer but the same was returned with the endorsement "Party not in station, arrival not known" whereupon respondent filed a complaint under S. 138 stating that the notice may be deemed to have been served and Magistrate passed orders under S. 204 CrPC registering a criminal case and issuing process against appellant, held, petition filed by appellant under S. 482 CrPC for quashing of the proceedings was premature as it was open to respondent to prove at trial that the endorsement was not correct and the drawer with the knowledge of the notice had deliberately avoided to receive the same — Therefore, High Court should not exercise its jurisdiction under S. 482 CrPC in such a situation — Object of S. 138 and especially its proviso (c) considered — Mischief rule of interpretation applied — Criminal Procedure Code, 1973, Ss. 482 and 402 — General Clauses Acts — General Clauses Act, 1897, S. 27*

Held :

The drawer of the cheque makes himself liable for prosecution under Section 138 of the Act if he fails to make the payment within fifteen days of the receipt of the notice given by the drawee. His failure to make the payment within the stipulated period gives rise to a cause of action to the complainant to prosecute the drawer under Section 138 of the Act. It is not the "giving" of the notice but it is the failure to pay after "receipt" of the notice by the drawer which gives the cause of action to the complainant to file the complaint within the statutory period. (Paras 9 and 21)

It is no doubt true that the receipt of the notice has to be proved, but if the notice is refused by the addressee, it may be presumed to have been served. In a case where notice is not claimed even though sent by registered post, with the aid of Section 27 of the General Clauses Act, the drawer of the cheque may be called upon to rebut the presumption which arises in favour of service of notice. However, no rule of universal application can be laid down that in all cases where notice is not served on account of non-availability of the addressee, the court must presume service of notice. (Paras 21, 14 and 11)

The question is whether in a case of this nature, where the postal endorsement shows that the notice could not be served on account of the non-availability of the addressee, a cause of action may still arise for prosecution of the drawer of the cheque on the basis of deemed service of notice under clause (*c*) of proviso to Section 138 of the Act. (Para 11)

If in each such case the law is understood to mean that there has been no service of notice, it would completely defeat the very purpose of the Act. Also, if the complainant does not file a complaint within one month of the date on which the cause of action arises under clause (*c*) of the proviso to Section 138 of the Act, his complaint gets barred by time. Thus, a person who can dodge the postman for about a month or two, or a person who can get a fake endorsement made regarding his non-availability can successfully avoid his prosecution because the payee is bound to issue notice to him within a period of 30 days from the date of receipt of information from the bank regarding the return of the cheque as unpaid. He is, therefore, bound to issue the legal notice which may be returned with an endorsement that the addressee is not available on the given address. It may be that the address is correct and even the addressee is available but a wrong endorsement is manipulated by the addressee. In such a case, if the facts are proved, it may amount to refusal of the notice. If the complainant is able to prove that the drawer of the cheque knew about the notice and deliberately evaded service and got a false endorsement made only to defeat the process of law, the court shall presume service of notice. This, however, is a matter of evidence and proof. Thus even in a case where the notice is returned with the endorsement that the pre-

mises has always been found locked or the addressee was not available at the time of postal delivery, it will be open to the complainant to prove at the trial by evidence that the endorsement is not correct and that the addressee, namely, the drawer of the cheque, with knowledge of the notice had deliberately avoided to receive notice. (Paras 14 and 15)

Therefore, the question as to whether the service of notice has been fraudulently refused by unscrupulous means and whether there was deemed service of notice, in the sense that the endorsement made on the returned envelope was a manipulated and false endorsement, is essentially a question of fact, and that must be considered in the light of the evidence on record. (Paras 15 and 24)

Therefore, it would be premature at the stage of issuance of process, to move the High Court for quashing of the proceeding under Section 482 CrPC. In such a case the High Court ought not to exercise its jurisdiction under Section 482. In the present case, the High Court was right in rejecting the petitions filed by the appellant under Section 482 CrPC. (Paras 15 and 24)

There may be unscrupulous complainants, who may manage to get a false postal endorsement of "refusal" or "unclaimed" or "party not available" and then prosecute an innocent or bona fide drawer. In such cases the drawer is not without remedy. He can also establish by evidence the said endorsement of "refusal" or "unclaimed" or "not found" during delivery time to be false. Alternatively, he may pay the amount due and compound the matter. Be that it may. (Para 25)

Section 138 of the Act was enacted to punish those unscrupulous persons who purported to discharge their liability by issuing cheques without really intending to do so, which was demonstrated by the fact that there was no sufficient balance in the account to discharge the liability. With a view to avoid unnecessary prosecution of an honest drawer of a cheque, or to give an opportunity to the drawer to make amends, the proviso to Section 138 provides that after dishonour of the cheque, the payee or the holder of the cheque in due course must give a written notice to the drawer to make good the payment. Clause (*c*) of proviso to Section 138 provides that the section shall not apply unless the drawer of the cheque fails to make the payment within 15 days of the receipt of the said notice. The proviso is meant to protect honest drawers whose cheques may have been dishonoured for the fault of others, or who may have genuinely wanted to fulfil their promise but on account of inadvertence or negligence failed to make necessary arrangements for the payment of the cheque. The law treats such lapses induced by inadvertence or negligence to be pardonable, provided the drawer after notice makes amends and pays the amount within the prescribed period. The proviso is not meant to protect unscrupulous drawers who never intended to honour the cheques issued by them, it being a part of their modus operandi to cheat unsuspecting persons. (Para 13)

It is well settled that in interpreting a statute the court must adopt that construction which suppresses the mischief and advances the remedy. This is a rule laid down in *Heydon's case* also known as the rule of purposive construction or mischief rule. (Para 12). *D. Vinod Shivappa* v. *Nanda Belliappa*, (2006) 6 SCC 456: (2006) 3 SCC (Cri) 114: AIR 2006 SC 2179: 2006 Cri LJ 2897: (2006) 130 DLT 534: (2006) 3 KLT 94.

Bench Strength **2**. Coram: **B.P. Singh** and *R.V. Raveendran*, JJ. [Date of decision: 25-5-2006]

[525] — Ss. 138 proviso (c) and 142 — Dishonour of cheque — Cause of action to prosecute drawer of the cheque when arises — *Held, the same arises when the drawer fails to make payment within 15 days of "receipt" of the notice*

The drawer of the cheque makes himself liable for prosecution under Section 138 of the Act if he fails to make the payment within fifteen days of the receipt of the notice given by the drawee. His failure to make the payment within the stipulated period gives rise to a cause of action to the complainant to prosecute the drawer under Section 138 of the Act. It is not the "giving" of the notice but it is the failure to pay after "receipt" of the notice by the drawer which gives the cause of action to the complainant to file the complaint within the statutory period. (Paras 9 and 21)

Section 138 of the Act was enacted to punish those unscrupulous persons who purported to discharge their liability by issuing cheques without really intending to do so, which was demonstrated by the fact that there was no sufficient balance in the account to discharge the liability. With a view to avoid unnecessary prosecution of an honest drawer of a cheque, or to give an opportunity to the drawer to make amends, the proviso to Section 138 provides that after dishonour of the cheque, the payee or the holder of the cheque in due course must give a written notice to the drawer to make good the payment. Clause (*c*) of proviso to Section 138 provides that the section shall not apply unless the drawer of the cheque fails to make the payment within 15 days of the receipt of the said notice. The proviso is meant to protect honest drawers whose cheques may have been dishonoured for the fault of others, or who may have genuinely wanted to fulfil their promise but on account of inadvertence or negligence failed to make necessary arrangements for

the payment of the cheque. The law treats such lapses induced by inadvertence or negligence to be pardonable, provided the drawer after notice makes amends and pays the amount within the prescribed period. The proviso is not meant to protect unscrupulous drawers who never intended to honour the cheques issued by them, it being a part of their modus operandi to cheat unsuspecting persons. (Para 13). *D. Vinod Shivappa* v. *Nanda Belliappa*, (2006) 6 SCC 456: (2006) 3 SCC (Cri) 114: AIR 2006 SC 2179: 2006 Cri LJ 2897: (2006) 130 DLT 534: (2006) 3 KLT 94.

Bench Strength **2**. Coram: **B.P. Singh** and *R.V. Raveendran*, JJ. [Date of decision: 25-5-2006]

— **Ss. 138, 118(a) & 139** *See* EVIDENCE ACT, 1872, Ss. 114 Ill. (g) & 34, (2006) 6 SCC 39

— **Ss. 138, 139 and 141** *See also* CRIMINAL PROCEDURE CODE, 1973, S. 200, (2006) 10 SCC 581

[526] — **Ss. 138, 139 and 141 — Dishonour of cheque — Offence by Company — Requisite averments in complaint — Strict compliance with the statutory requirements — Absence of — Effect** — *Complaint not containing any statement that the appellant-accused were in charge of the business of the Company at the material time — Nor the statement of PW alleging that appellants were in charge of the business of the Company — Held, requirements of S. 141 not complied with — Hence, impugned judgments set aside and process issued against the appellants quashed — Criminal Procedure Code, 1973, Ss. 482 and 204*

Two complaint petitions were filed by the respondent herein describing appellants herein as Accused 6 and 8. In the said complaint petitions it was stated that the Company which had been dealing with imparting of computer education in rural areas borrowed a sum of Rs 2,25,000 from the respondent on an interest of 24% per annum. Towards payment of the said loan the accused had issued two cheques allegedly on behalf of the Company on 23-6-2001 and 30-6-2001 for a sum of Rs 1,24,406 each, in favour of the respondent, which upon being presented were dishonoured as the Company did not have sufficient funds. The appellants were not the Directors of the said Company at the material time. It was submitted by the complainant that the accused persons failed to clear the liability. It was further submitted that the accused, being the company, all the Directors were responsible for the clearance of liability under Section 141 of the Negotiable Instruments Act and that the acts and deeds of the accused persons were punishable under Section 138 of the Negotiable Instruments Act. Process were directed to be issued on the said statement for alleged commission of an offence under Section 138 of the Negotiable Instruments Act. The appellants filed an application under Section 482 CrPC praying for quashing of the process issued against them in the said proceedings. The High Court dismissed the said application.

Allowing the appeals,

Held :

A bare perusal of the complaint petitions demonstrates that the statutory requirements contained in Section 141 of the Negotiable Instruments Act had not been complied with. It may be true that it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused are vicariously liable. Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company. Before a person can be made vicariously liable, strict compliance with the statutory requirements would be insisted upon. Not only the averments made in the complaint petitions do not meet the said statutory requirements, the sworn statement of the witness made by the son of the respondent herein does not contain any statement that the appellants were in charge of the business of the Company. In a case where the court is required to issue summons which would put the accused to some sort of harassment, the court should insist upon strict compliance with the statutory requirements. (Para 7). *Sabitha Ramamurthy* v. *R.B.S. Channabasavaradhya*, (2006) 10 SCC 581: (2007) 1 SCC (Cri) 621: AIR 2006 SC 3086: 2006 Cri LJ 4602.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 13-9-2006]

Monaben Ketanbhai Shah v. State of Gujarat, (2004) 7 SCC 15: 2004 SCC (Cri) 1857; Katta Sujatha v. Fertilizers & Chemicals Travancore Ltd., (2002) 7 SCC 655: 2003 SCC (Cri) 151; S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89: 2005 SCC (Cri) 1975, followed

[527] — **Ss. 138, 139 and 141 — Dishonour of cheque — Offence by Company — Requisite averments to be made in complaint** — *Held, not necessary to reproduce the wordings of S. 141 specifically — What is required is a clear statement of fact to enable the court to arrive at a prima facie opinion that the accused are vicariously liable for the offence by the company*

A bare perusal of the complaint petitions demonstrates that the statutory requirements contained in

Section 141 of the Negotiable Instruments Act had not been complied with. It may be true that it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused are vicariously liable. Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company. (Para 7). *Sabitha Ramamurthy* v. *R.B.S. Channabasavaradhya*, (2006) 10 SCC 581: (2007) 1 SCC (Cri) 621: AIR 2006 SC 3086: 2006 Cri LJ 4602.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 13-9-2006]

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[528] — Ss. 138, 139 and 141 — Dishonour of cheque — Offence by Company — Vicarious liability of accused — Requisite averments in complaint — *Held, S. 141 raises a legal fiction by reason of which although a person is not personally liable for commission of such an offence, would be vicariously liable therefor — Such vicarious liability can be inferred, so far as a company is concerned, only if the requisite statements required to be averred in the complaint are made so as to make the accused vicariously liable for the offence committed by the company* (Para 7). *Sabitha Ramamurthy* v. *R.B.S. Channabasavaradhya*, (2006) 10 SCC 581: (2007) 1 SCC (Cri) 621: AIR 2006 SC 3086: 2006 Cri LJ 4602.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 13-9-2006]

[529] — Ss. 138 & 142(b) — Period of limitation to file complaint under S. 138 — Mode of reckoning of — *Held, is to be reckoned by excluding the day on which cause of action had accrued — Counting the period of limitation in this way, held, the complaint herein was filed well within time — As such the High Court was not justified in holding that there was two days' delay in filing the same — Limitation — Limitation Act, 1963, S. 12(1) — Penal Code, 1860, S. 420* (Para 2). *Jindal Steel and Power Ltd.* v. *Ashoka Alloy Steel Ltd.*, (2006) 9 SCC 340: (2006) 2 SCC (Cri) 540.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 8-11-2005]

Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1: 1999 SCC (Cri) 329, followed

[530] — Ss. 139, 118(a) & 138 — Cheque issued to complainant sharebroker in share dealing — Presumption under the NI Act that the cheque was issued in discharge of debt — Rebuttal of — *Defence of accused that he issued the cheque in question by way of security and not towards any amount due to the complainant in share transactions — Held on facts, the said defence was acceptable as probable — In this regard, practice prevailing in the said business taken note of — Thus, the said cheque could not be said to have been issued in discharge of debt — Hence, the same would not come within the purview of S. 138 — Evidence Act, 1872, S. 114* (Paras 52, 22 and 34). *M.S. Narayana Menon* v. *State of Kerala*, (2006) 6 SCC 39: (2006) 3 SCC (Cri) 30: (2006) 3 KLT 404: (2006) 5 Mah LJ 676: (2006) 4 MPLJ 97.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 4-7-2006]

— Ss. 142(b) and 138 — Quashing of complaint by another High Court *See* CONSTITUTION OF INDIA — 'Article 226' — Articles 226 and 227, Arts. 226 and 227, (2006) 3 SCC 658

OCULAR AND MEDICAL EVIDENCE

See CRIMINAL TRIAL — 'Appreciation of evidence'

OFFICIAL LANGUAGES ACT, 1963

— Ss. 3, 5 & 6 *See* CONSTITUTION OF INDIA, Art. 348, (2006) 10 SCC 587

PAROLE

See PRISONS

PASSPORT (ENTRY INTO INDIA) ACT, 1920

See CITIZENSHIP, MIGRANTS AND ALIENS

PENAL CODE, 1860

— S. 21 cl. 12 *See* CRIMINAL PROCEDURE CODE, 1973, S. 197, (2005) 13 SCC 213

— S. 34 *See also* S. 149, below

[531] — S. 34 — Common intention — *Held, to attract mischief of S. 34 following two things need to be established: (i) common intention to commit an offence; and (ii) participation in commission of the offence — Where these two ingredients were satisfied, further held, even overt act on part of some of the persons sharing the common intention was not necessary — A finding that the assailant concerned had a common intention with other accused was necessary to take resort to S. 34 — On facts held, if there was common intention to commit any crime it was only to loot the valuables belonging to the deceased and not to murder him — In the absence of any charge being framed under S. 397 IPC, it is difficult to hold the appellants guilty of murder inasmuch as it has not been proved as to who actually strangulated the deceased — In the absence of any evidence that all of*

them were present when the deceased was strangulated, a charge under Ss. 302/34 could not have been brought home (Paras 15 and 19). *Sunny Kapoor* v. *State (UT of Chandigarh)*, (2006) 10 SCC 182: (2006) 3 SCC (Cri) 522: AIR 2006 SC 2242: 2006 Cri LJ 2920.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-5-2006]

[532] — **S. 34 — Common intention — Formation of, at the spot of occurrence — Inference in respect of, held, has to be drawn having regard to the actual role played by the accused** (Para 15). *Vaijayanti* v. *State of Maharashtra*, (2005) 13 SCC 134: (2006) 1 SCC (Cri) 790.

Bench Strength **2**. Coram: *S.B. Sinha* and *R.V. Raveendran*, JJ. [Date of decision: 22-9-2005]

[533] — **S. 34 — Common intention — Proof** — *Held, can be proved either from direct evidence or by inference from the acts or attending circumstances of the case and conduct of the parties* (Para 12). *Pardeep Kumar* v. *Union Admn.*, (2006) 10 SCC 608: (2007) 1 SCC (Cri) 41: AIR 2006 SC 2992: 2006 Cri LJ 3894.

Bench Strength **2**. Coram: *B.N. Agrawal* and **P.P. Naolekar**, JJ. [Date of decision: 18-8-2006]

[534] — **S. 34 — Invocation of — When proper — Need for action in concert** — *Held on facts, the High Court committed a manifest error in invoking S. 34 once it was held that the appellants were liable to be convicted for their individual acts only — Question of failure by the prosecution to explain injuries on the person of accused had not been considered by the High Court and it had wrongly held that burden of proof in respect thereof lay on the accused-appellants* (Para 22). *Nagarathinam* v. *State*, (2006) 9 SCC 57: (2006) 3 SCC (Cri) 212: AIR 2006 SC 1736: 2006 Cri LJ 2120.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-4-2006]

[535] — **S. 34 [S. 302 r/w S. 34] — Act done by several persons in furtherance of common intention of all — Joint criminal liability under S. 34, reiterated — Positive overt act on the part of the accused — Necessity of** — *Held, not necessary — Even an omission on his part to do something may attract the said provision — Question as to applicability of S. 34 must be answered having regard to the fact situation obtaining in each case* (Para 9). *Vaijayanti* v. *State of Maharashtra*, (2005) 13 SCC 134: (2006) 1 SCC (Cri) 790.

Bench Strength **2**. Coram: *S.B. Sinha* and *R.V. Raveendran*, JJ. [Date of decision: 22-9-2005]

[536] — **S. 34 [S. 302 r/w S. 34] — Common intention to commit murder — Sharing of — Inference in respect of — Exhortation made by appellant at the spot — No other overt act attributed to her** — *She did not carry any weapon — She arrived at the spot after the other accused (brother of appellant and his friend) reached there and were assaulting the deceased — Considering the actual role played by the appellant and also the facts and circumstances in which dispute arose viz.* ***G*** *(brother of deceased) allegedly outraged the modesty of daughter of appellant's sister, held, it was difficult to conclude that appellant was a party to murder in question — Conclusion as to sharing of common intention drawn by High Court on the grounds that (i) the appellant gave an exhortation, (ii) she chased the deceased, (iii) she did not do anything to prevent the other accused from committing the crime, and (iv) the common intention developed on the spur of the moment, held on facts, not proper*

No evidence has been brought on record by the prosecution to show that the accused persons met prior to the date of occurrence for the purpose of commission of the said offence. It is true that common intention can be formed even on the spot but for the said purpose it is essential to consider the role played by the accused. (Para 15)

The dispute in question arose as *G* (brother of deceased) has allegedly outraged the modesty of one *M*. *M* was the appellant's sister's daughter. The appellant may have become enraged because *M*'s modesty was outraged. But it is difficult to arrive at a conclusion that she would be a party to the murder. Had she shared the common intention, she could have armed herself with a weapon and she would have played a more active role than what had been attributed to her by the prosecution. The expressions alleged to have been used by the appellant, according to different witnesses, were different. No other overt act is attributed to the appellant. She had not caused any injury nor any weapon had been recovered from her. The appellant arrived at the spot after the other accused persons reached the spot and had been assaulting the deceased by gupti and knife. PW 5 could not state as to how and in what manner the appellant gave exhortation. The High Court, therefore, was not correct in arriving at a finding that the appellant had shared the common intention with other accused for commission of the crime. (Paras 15, 17, 5 and 16). *Vaijayanti* v. *State of Maharashtra*, (2005) 13 SCC 134: (2006) 1 SCC (Cri) 790.

Bench Strength **2**. Coram: *S.B. Sinha* and *R.V. Raveendran*, JJ. [Date of decision: 22-9-2005]

State of Orissa v. Arjun Das Agrawal, (1999) 8 SCC 154: 1999 SCC (Cri) 1378; Hem Raj v. Raja Ram, (2004) 9 SCC 18: 2004 SCC (Cri) 1412; Idrish Bhai Daudhbai v. State of Gujarat, (2005) 3 SCC 277: 2005 SCC (Cri) 700, applied

Krishnan v. State of Kerala, (1996) 10 SCC 508: 1996 SCC (Cri) 1375; Gopi Nath v. State of U.P., (2001) 6 SCC 620; Girija Shankar v. State of U.P., (2004) 3 SCC 793: 2004 SCC (Cri) 863, distinguished on facts

[537] — S. 34 [S. 302 r/w S. 34] — Conviction based solely on sharing common intention with accused who having died did not face trial — Sustainability — *Upheld where there was unimpeachable evidence for conviction of the dead co-accused — Explosive Substances Act, 1908, Ss. 3 and 5*

From the prosecution evidence it becomes clear that the appellant shared the common intention with the accused *T* (who died prior to commencement of the trial) to cause the death of the deceased. Thus, there is no difficulty in holding that if *T* would not have died, on the basis of evidence adduced by the prosecution, which is unimpeachable, he was liable to be convicted under Section 302 with the aid of Section 34 IPC, but merely because he died before the commencement of his trial and could not be tried, the appellant cannot take any advantage therefrom. Hence, the High Court has not committed any error in upholding the convictions of the sole appellant under Section 302 read with Section 34 IPC as well as Sections 3 and 5 of the Explosive Substances Act, 1908. (Paras 12 and 1). *Rajan Rai* v. *State of Bihar*, (2006) 1 SCC 191: (2006) 1 SCC (Cri) 209: AIR 2006 SC 433: 2006 Cri LJ 163.

Bench Strength **2**. Coram: **B.N. Agrawal** and *A.K. Mathur*, JJ. [Date of decision: 10-11-2005]

Krishna Govind Patil v. State of Maharashtra, (1964) 1 SCR 678: AIR 1963 SC 1413: (1963) 2 Cri LJ 351, explained and distinguished

[538] — S. 34 [S. 302 r/w S. 34] — Three accused going on a scooter and motorcycle, on seeing the deceased and PW 1 sitting at the steps of a shop, returning back — *Exchange of hot words taking place between A-1 and the deceased which ultimately culminating in A-1 seriously attacking the deceased with a knife resulting in his death — PW 3 while trying to intervene prevented and threatened by the accused-appellant by causing him knife injury — Held, this conduct of the accused-appellant is sufficient to attract S. 34 because he acted in furtherance of common intention of accused A-1 — Accused-appellant rightly convicted under S. 302 r/w S. 34* (Paras 9 and 10). *Kishore Eknath Nikam* v. *State of Maharashtra*, (2006) 10 SCC 666: (2007) 1 SCC (Cri) 62.

Bench Strength **2**. Coram: *G.P. Mathur* and **A.K. Mathur**, JJ. [Date of decision: 22-9-2006]

Parshuram Singh v. State of Bihar, (2002) 8 SCC 16: 2003 SCC (Cri) 184; Mithu Singh v. State of Punjab, (2001) 4 SCC 193: 2001 SCC (Cri) 668; Idrish Bhai Daudbhai v. State of Gujarat, (2005) 3 SCC 277: 2005 SCC (Cri) 700, distinguished

[539] — S. 34 [Ss. 302/34 or S. 326] — Appellant and second accused charged for committing murder of *U* — Appellant causing only one single injury on the hand of the deceased, whereafter he leaving the weapon and running away from the scene of occurrence — *No evidence as to how the incident originated i.e. whether it originated suddenly or whether the accused had gone with sole intention to murder **U** — Moreover, no evidence to also show that the appellant had in any way enabled the second accused to cause injuries on the deceased — Held, on considering evidence as a whole it appears that the appellant did not share the common intention to cause the death of the deceased, therefore, conviction of the appellant for offence under Section 302 read with Section 34 IPC not sustainable — However, appellant convicted under S. 326 for causing grievous hurt with a deadly weapon and sentenced to imprisonment for five years — He, entitled to set off the sentence, if any, already undergone* (Paras 5, 6 and 7). *Palanisamy* v. *State of T.N.*, (2006) 10 SCC 297: (2006) 3 SCC (Cri) 541.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *P.P. Naolekar*, JJ. [Date of decision: 5-8-2005]

[540] — Ss. 34, 323 and 302/304 Pt. II — Common intention — Circumstantial inferences — Sustainability — *Father (A-1) and son (A-5) convicted under Ss. 302/34 by the trial court which was affirmed by High Court for murdering one **R** — Sustainability — Quarrel between A-5 and PW 1 over grazing of cows whereupon A-5 beating PW 1 with a bamboo stick — **R** (deceased) intervening to save PW 1 — Mutual fight between the accused and the prosecution party and both suffering simple injuries — A-1 dealing a dao-blow on the occipital region of the deceased — Incident taking place on 10-8-1990 and deceased succumbing to the injuries on 15-8-1990 — Appellant-accused neither disputing the incident nor the homicidal death — They only contending that since the original quarrel had taken place between A-5 and PW 1, there could not be any meeting of minds between the father and the son — Held, common intention is the premeditated meeting of minds, which can also be formed on the spot — But in the instant case, since the original quarrel was between A-5 and PW 1, it is difficult to say that there was common intention either premeditated or formed on the spot with regard to murder of **R** — **R** was the intervenor and the incident occurred on the spur of the moment — Hence, murder of **R** was not intentional — Dao-blow was dealt by only A-1, and if at all, conviction can be maintained under S. 302 since the death resulted by his independent act and A-5 cannot be roped in with the aid of S. 34 — A-5's conviction*

under S. 323 imposed by the trial court and affirmed by the High Court, and sentence of one year's RI, justified (Paras 2 and 4). *Abani K. Debnath* v. *State of Tripura*, (2005) 13 SCC 422: (2006) 2 SCC (Cri) 257: AIR 2006 SC 518: 2006 Cri LJ 314.

Bench Strength **2**. Coram: **H.K. Sema** and *R.V. Raveendran*, JJ. [Date of decision: 22-11-2005]

[541] — Ss. 34 and 320 — Common intention — Proof — *Accused **R** and **L** armed with SBBL gun and DBBL gun respectively and accused **G** and **R** armed with country-made pistols waylaying the prosecution party and **R** and **L** firing at the deceased resulting in his death — Submission that actual assailants **R** and **L** having expired and no active part attributed to **G** and **R**, they should be acquitted — Held, **G** and **R** cannot be said to have accompanied the other accused out of idle curiosity — Their intention to commit the offence in furtherance of the common intention can clearly be inferred from the circumstances — Hence, their conviction under Ss. 302/34 justified* (Paras 16 and 17). *State of U.P.* v. *Ganga Ram*, (2005) 13 SCC 239: (2006) 2 SCC (Cri) 154: AIR 2006 SC 20: (2006) 1 All LJ 298: 2005 Cri LJ 4643.

Bench Strength **2**. Coram: **H.K. Sema** and *P.P. Naolekar*, JJ. [Date of decision: 25-10-2005]

State of Rajasthan v. Kishan Singh, (2002) 10 SCC 160: 2004 SCC (Cri) 456, distinguished

[542] — Ss. 34 or 149 and 302 — Conviction with aid of S. 34 when charge under S. 149 — When permissible — *Held, even if accused not charged with the aid of S. 34 and instead charged with the aid of S. 149, he can be convicted with the aid of S. 34 when evidence shows that there was common intention to commit the crime and no prejudice or injustice would be caused to accused thereby — Having regard to evidence of eyewitnesses and injuries sustained by deceased as indicated in post-mortem report, held, accused shared the common intention to cause death of the deceased and no prejudice would be caused to them if they are convicted under S. 302 with the aid of S. 34 instead of with the aid of S. 149 as originally charged*

According to the prosecution case, six accused went to the disputed land armed with axes and crowbars and started digging pits in order to fix poles therein for construction of a shop house. The deceased *U*, his father *K* and his uncle deceased *B* reached the spot and objected to the act of the accused and suggested that they should get the land measured by an Amin so as to verify whether the land belonged to them or not. *U* then caught hold of one of the poles fixed by the accused and tried to uproot it. Enraged by this act, the accused persons assaulted the victims with axes and crowbars causing death of *U* and *B* and injuries to *K*. Plea taken by one of the accused was that the deceased persons and *K* had come to the spot armed with deadly weapons and attacked him and he in exercise of right of self-defence of person and property whirled the axe which he was holding whereby the deceased persons sustained injuries and died. Another accused had set up the defence of alibi. All the six accused were tried for offences punishable under Sections 148, 302/149 and 323/149 IPC. The trial court did not accept the defence plea relating to right of private defence and alibi. Relying upon the evidence of the injured witness *K* and two other eyewitnesses, it concluded that the intention of the accused was to cause death of the deceased and to cause injuries to *K* and accordingly, it convicted them and sentenced them to undergo life imprisonment for causing death of two persons.

In appeal, the High Court acquitted two accused on reasonable doubt as to their involvement in the crime. Since the remaining four accused (appellants) could not be convicted taking aid of Section 149 IPC, the High Court on the basis of evidence led by prosecution held that the offence under Section 302 IPC was proved against them and accordingly, confirmed sentence of life imprisonment imposed by trial court. No separate sentence had been passed under Section 323 IPC. Before the Supreme Court a question was raised as to whether in the absence of a charge under Section 34 IPC the accused-appellants can be convicted with the aid thereof, when they were charged with an offence under Section 302 read with Section 149 IPC only.

Dismissing the appeal,

Held :

To convict the accused of an independent charge under Section 302 IPC, it is necessary that the court should reach to the conclusion that the injuries inflicted by each individual taken in isolation, were sufficient in the ordinary course of nature to cause death of the deceased persons. If the court reaches to the conclusion on the basis of the material placed before it that the injuries were sufficient in the ordinary course of nature to cause death and the nature of injuries was homicidal, the court can convict each and every accused under Section 302 IPC, but if the court cannot conclusively reach to the finding that each and every individual involved in commission of the offence has caused such injuries which are sufficient in the ordinary course of nature to cause death, the accused cannot be convicted under Section 302 IPC. If the injuries caused are sufficient in the ordinary course of nature and they have been caused in furtherance of the common intention, then each and every individual propagating the common intention can be

convicted under Section 302 read with Section 34 IPC, although he has not been charged under Section 34 IPC and has been charged under Section 149 IPC along with Section 302 IPC. (Para 8)

There is no bar on conviction of the accused-appellants with the aid of Section 34 IPC in place of Section 149 IPC if there is evidence on record to show that such accused shared a common intention to commit the crime and no apparent injustice or prejudice is shown to have been caused by application of Section 34 IPC in place of Section 149. (Para 13)

In this case, the evidence of the injured witness *K* and two other eyewitnesses, was supported by the medical evidence of the doctors who performed autopsy on the two deceased. According to the doctors, the injuries sustained by the deceased were homicidal in nature and were sufficient in the ordinary course of nature to cause death. One of the doctors opined that the injuries could be caused by heavy sharp cutting weapon like axe while the other doctor opined that the injuries could be possible by sharp edge of an axe and crowbar.

The evidence of the witnesses along with the injuries reported in the post-mortem reports clearly bring out the common intention of the accused-appellants to do away with the deceased. They would not be prejudiced merely because the charge was framed under Section 302 read with Section 149 IPC and not under Section 302 read with Section 34 IPC. (Para 23)

In overall consideration of the evidence, there is no infirmity in the conviction of the accused-appellants. However, the accused-appellants must be convicted and sentenced under Section 302 read with Section 34 IPC for life imprisonment instead of Section 302 simpliciter. (Para 25). *Dhaneswar Mahakud* v. *State of Orissa*, (2006) 9 SCC 307: (2006) 2 SCC (Cri) 505: AIR 2006 SC 1727: 2006 Cri LJ 2113.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.P. Naolekar**, JJ. [Date of decision: 5-4-2006]

— Ss. 40 and 43 *See* WORDS AND PHRASES, (2006) 4 SCC 278

— S. 71 — Applicability *See* PREVENTION OF CORRUPTION ACT, 1988, Ss. 7 and 13(1)(d), (2006) 11 SCC 473

— S. 71 — Punishment to be imposed for simultaneous conviction for more than one offence — Principle for *See* PREVENTION OF CORRUPTION ACT, 1988, Ss. 7 and 13(2) & (1)(d), (2006) 11 SCC 473

[543] — S. 71 r/w S. 220 CrPC — Applicability — *Question to be posed by court, enunciated*

The stand that the respondent could not have been simultaneously convicted for the offences relatable to Section 7 and Section 13(2) read with Section 13(1)(*d*) of the Act, as held by the High Court is clearly unacceptable. Section 71 IPC provides the complete answer. The position is further crystallised in Section 220 CrPC. The crucial question that is to be posed is whether the alleged act is an offence and if the answer is in the affirmative, whether it is capable of being construed as offence under one or more provisions. That is the essence of Section 71 IPC, in the backdrop of Section 220 CrPC. (Paras 5 to 7). *State* v. *A. Parthiban*, (2006) 11 SCC 473: (2007) 1 SCC (Cri) 520: 2006 Cri LJ 4772.

Bench Strength **2**. Coram: **Arijit Pasayat** and *R.V. Raveendran*, JJ. [Date of decision: 9-10-2006]

— S. 72 — Applicability *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 215, 173, 220 & 228, (2007) 1 SCC 1

[544] — Ss. 96 and 97 — Plea of private defence — Burden of proof — *Held, is on the accused but the burden is not as onerous as that which lies on the prosecution — While the prosecution is required to prove its case beyond reasonable doubt, the accused can discharge his onus by establishing a preponderance of probability — Further held, such plea can be established either by letting in defence evidence or from the prosecution evidence itself, but cannot be based on mere speculation or surmises — Evidence Act, 1872, Ss. 101 and 105*

It is now well settled that the onus is on the accused to establish that his action was in exercise of the right of private defence. The plea can be established either by letting in defence evidence or from the prosecution evidence itself, but cannot be based on speculation or mere surmises. The accused need not take the plea explicitly. He can succeed in his plea if he is able to bring out from the evidence of the prosecution witnesses or other evidence that the apparent criminal act was committed by him in exercise of his right of private defence. He should make out circumstances that would have reasonably caused an apprehension in his mind that he would suffer death or grievous hurt if he does not exercise his right of private defence. There is a clear distinction between the nature of burden that is cast on an accused under Section 105 of the Evidence Act (read with Sections 96 to 106 of the Penal Code) to establish a plea of private defence and the burden that is cast on the prosecution under Section 101 of the Evidence Act to prove its case. The burden on the accused is not as onerous as that which lies on the prosecution. While the prosecution is required to prove its case beyond a reasonable doubt, the accused can discharge his onus by establishing a preponderance of probability. (Para 15). *Krishnan* v. *State of T.N.*, (2006) 11 SCC 304: (2007) 1 SCC (Cri) 437: AIR 2006 SC 3037: 2006 Cri LJ 3907.

Bench Strength **2**. Coram: *G.P. Mathur* and **R.V. Raveendran**, JJ. [Date of decision: 14-8-2006]

[545] — Ss. 96 and 97 — Plea of private defence — Altercation between the deceased and the appellant regarding removal of thorn sticks covering the drain — *Appellant alleging that the deceased and his son assaulted him with sticks and to save himself he raised his hands and his elbows were injured in the process — He picking up a thorn stick lying nearby and hitting the deceased with it on his head — Deceased succumbing to the injuries two days later — PW 2 who was a neighbour and nephew of both the deceased and the appellant categorically stating that as it was summer, water was not stagnating in the drain and hence there was no nuisance of pigs and that because of the thorn sticks appellant could not tether his cattle — He also stating that the appellant hit deceased on head with a thorn stick lying nearby — Appellant not examining the doctor who treated his injuries, nor any FIR lodged regarding the alleged incident, nor his injuries recorded by the jail doctor — Held, these factors would normally militate against acceptance of plea of self-defence, but the clean and uncontroverted evidence of PW 2 and the plausible explanation by the accused in his explanation under S. 313 tilts the balance — His action in hitting the deceased on head by taking a stick lying on the ground, was a reflex action to save himself — Appellant had not gone to the spot with any weapon — Hence, appellant acquitted of all charges*

The appellant and his elder brother *R* (deceased) were residing with their respective families in two adjoining portions, with a common open yard in front of their houses. The appellant used to tether his bullocks in the common yard. There was also an open sewage drain in the common yard. To prevent pigs coming to the drain and causing nuisance *R*'s wife covered the drain with thorn sticks. The appellant removed the thorn sticks as they came in the way of tethering his bullocks. A quarrel ensued whereupon the appellant picked up a thorn stick lying on the floor and hit the deceased on his head. When the appellant tried to hit the deceased for the second time, the deceased's son *E* (PW 1) intervened and received the blow causing injury to his right palm. Thereafter the appellant pushed *R* who fell down and a protruding stone pierced him near the armpit. The appellant and his sons also hit *E* with thorn sticks. *R* was taken to a hospital where he succumbed to his injuries.

The trial court rejecting appellant's plea of self-defence convicted him under S. 302 IPC. The High Court in appeal did not consider his plea of self-defence though specifically raised. However, it altered the conviction to S. 304 Part II holding that the act of the appellant was neither premeditated nor predetermined and he had come to the place of occurrence without any weapon but had hit the deceased with the knowledge that his act of hitting the deceased on his head was likely to cause death.

Hence the present appeal. The specific plea but forth by the appellant was that *R* and his family were jealous of the appellant as he was maintaining bullocks and cultivating the land; that therefore, they were trying to obstruct the tethering of his bullocks in the common yard by putting thorn sticks in that place; that there was no drain/gutter in the common yard and, therefore, the question of covering any drain by thorn sticks did not arise; that the thorns were pricking his bullocks and making it difficult for him to tether his cattle; that whenever he removed the thorns and tethered his cattle, *R* and his son threatened to assault and kill him; that on the day of incident they had thrown thorny sticks next to the bullocks tethered by the appellant, the said thorns were pricking the cattle and made it difficult for the cattle to lie down; that, therefore, he went and removed the thorn sticks; that at that time, PW 1 held his neck and *R* his hair locks and when he tried to release himself *R* bit him next to the right thumb and blood started oozing out; that thereafter they took a stick each and slashed towards his head; that he raised his hands to cover his head, and that the blows fell on both his elbows resulting in lacerated wounds. Fearing his life he went to the police station and lodged a complaint and also showed his wounds. He was detained in the police station for two days, treated for his injuries and thereafter sent to the court.

Allowing the appeal,

Held :

It is now well settled that the onus is on the accused to establish that his action was in exercise of the right of private defence. The plea can be established either by letting in defence evidence or from the prosecution evidence itself, but cannot be based on speculation or mere surmises. The accused need not take the plea explicitly. He can succeed in his plea if he is able to bring out from the evidence of the prosecution witnesses or other evidence that the apparent criminal act was committed by him in exercise of his right of private defence. He should make out circumstances that would have reasonably caused an apprehension in his mind that he would suffer death or grievous hurt if he does not exercise his right of private defence. There is a clear distinction between the nature of burden that is cast on an accused under Section 105 of the Evidence Act (read with Sections 96 to 106 of the Penal Code) to establish a plea of private defence and the burden that is cast on the prosecution under Section 101 of the Evidence Act to prove its case. The burden on the accused is not as onerous as that which lies on the prosecution. While the prosecution is required to prove its case beyond a reasonable

doubt, the accused can discharge his onus by establishing a preponderance of probability. (Para 15)

PW 2 was a neighbour and nephew of both the deceased and the appellant. In his examination-in-chief he gave details of the quarrel and stated that the appellant took a thorn stick that was lying nearby and hit the deceased on his head; that when the appellant tried to hit *R* second time, PW 1 tried to prevent it, he sustained injuries. In the cross-examination, he stated that as it was summer, water was not stagnating in the drain situated in the common yard and there was no nuisance by pigs; that because of the thorn sticks, the cattle had no place to rest. He also narrated the sequence of events wherein the appellant, PW 1 and the deceased sustained injuries and also the fact that when he accompanied *R* and others to the police station he saw the appellant there. (Para 18)

The above evidence clearly and completely corroborates and supports the case of self-defence put forth by the appellant. What is significant is that PW 2 was not subjected to any re-examination on this aspect nor was he sought to be declared hostile. In fact, the manner in which he has given evidence in the examination-in-chief and in the cross-examination shows that he was not a partisan witness and was giving evidence in a natural manner. His evidence has not been considered by the trial court and completely ignored by the High Court. (Para 19)

Out of the four eyewitnesses, two (PWs 1 and 5) are the son and widow of the deceased. The evidence of these two witnesses establishes that there was enmity and an ongoing dispute in regard to the use of the common yard. That on the day of the incident, the entire quarrel arose because PW 5 initially placed the thorn sticks over the area where the appellant was tethering his cattle, and the deceased and PW 1 prevented the appellant when he tried to remove them; and that as a consequence there was an altercation between the deceased and the appellant when the deceased repeatedly placed the thorny sticks and the appellant repeatedly removed them. In fact the evidence of the two independent eyewitnesses, PW 2 and PW 4, clearly shows that there was no stagnant water in the drain and, therefore, there was no need to place any thorn sticks over that area. It is clear that the deceased, PW 1 and PW 5 were bent upon preventing the appellant from tethering his cattle in the common yard. When the deceased and his son attacked the appellant, apprehending grievous hurt, he took the thorn stick lying nearby and hit the deceased to protect himself. The appellant was neither armed with any weapon when he came to the spot nor brought anything from his house after the quarrel started. He just picked up the thorn stick which was lying at the spot. This clearly probabilises a case of self-defence. (Paras 21 and 22)

Further, evidence of PWs 2 and 4 establish that there was no stagnant water in the drain situated in the common yard. Therefore, the case of the prosecution that the pigs were coming and causing nuisance in the stagnant water in the drain and, therefore, thorn sticks were placed by the family of the deceased to cover the drain, is proved to be false. It is clear that the deceased and his wife and son were putting thorny sticks to prevent the appellant from tethering his cattle and they started the discord. (Para 23)

The trial court considered the plea of self-defence but rejected it on the ground that the appellant did not state in his statement under Section 313 CrPC that he had hit *R* in self-defence. Obviously, an accused cannot be expected to admit that he had inflicted the blow that killed the deceased. Where the plea of the accused, when read with the evidence of the eyewitnesses, brings out a set of facts and circumstances showing that the accused acted in exercise of the right of private defence, the fact that the accused in his Section 313 CrPC statement only referred to the acts of the deceased and his son hitting him and did not admit that he hit back the deceased, is not a ground to reject the plea of private defence. The approach of the trial court to the plea of private defence was erroneous. The High Court did not go into this aspect at all. (Para 24)

It is true that the appellant has not examined the doctor who treated his injuries on his elbows. There is also no FIR in regard to the appellant's version of the incident. There is nothing to show that the jail doctor recorded the injuries. These factors would normally militate against the acceptance of a plea of self-defence. But the clean and uncontroverted evidence of PW 2 and the plausible explanation by the accused in his statement under Section 313 tilts the balance. The court must be objective and must examine the matter on the facts and circumstances of each case to find out whether the situation was such as was likely to reasonably cause apprehension in the mind of the accused that death or grievous hurt would be caused to him if he did not act in self-defence. His action in hitting the deceased on his head by taking a stick lying on the ground, was a reflex action to save himself from the attack by the deceased and his son. The appellant had not gone to the spot with any weapon. The deceased died two days later on account of the resultant injury. For the foregoing reasons, his conviction under Ss. 302 and 323 is set aside and the appellant is acquitted of all charges. (Paras 25 and 26). *Krishnan* v. *State of T.N.*, (2006) 11 SCC 304: (2007) 1 SCC (Cri) 437: AIR 2006 SC 3037: 2006 Cri LJ 3907.

Bench Strength **2**. Coram: *G.P. Mathur* and **R.V. Raveendran**, JJ. [Date of decision: 14-8-2006]

[546] — Ss. 96 and 97 — Private defence — Plea of — Approach to be followed in considering — Held, plea of private defence cannot be based on surmises and speculations — *While considering such plea the entire incident must be examined with care and viewed in its proper setting — Question whether the accused had chance to inflict severe and mortal injury on the aggressor not relevant — Further held, burden is on the accused to establish his right of private defence extending to causing of death — Evidence Act, 1872, Ss. 101 and 102* (Para 10). *Raj Pal* v. *State of Haryana*, (2006) 9 SCC 678: (2006) 3 SCC (Cri) 361.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 19-4-2006]

[547] — Ss. 96 and 97 — Right of private defence — Plea of — Sustainability — *Non-explanation of injuries on accused by prosecution — Effect — Held, it may not be necessary for the prosecution to explain the injuries on the person of the accused in all circumstances, but, it is trite that when such a plea is raised and the court opines that the version of the accused persons may be correct, the explanation of injuries on the person of the accused cannot be put to a back seat or cannot simply be ignored* (Para 23). *Umrao* v. *State of Haryana*, (2006) 10 SCC 136: (2006) 3 SCC (Cri) 482: AIR 2006 SC 2152: 2006 Cri LJ 2798.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 12-5-2006]

[548] — Ss. 96 and 97 — Right of private defence — Plea of — Sustainability — *On facts held, merely because there was a quarrel and some of the accused persons sustained injuries, that does not confer a right of private defence extending to the extent of causing death — Further held, though such right cannot be weighed in golden scales, it has to be established that the accused persons were under such grave apprehension about the safety of their life and property that retaliation to the extent done was absolutely necessary — In the present case, no evidence much less cogent and credible was adduced in this regard and hence right of private defence has rightly been negated by the High Court* (Para 13). *Raj Pal* v. *State of Haryana*, (2006) 9 SCC 678: (2006) 3 SCC (Cri) 361.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 19-4-2006]

[549] — Ss. 96, 97 and 100 — Plea of private defence — Burden of proof — *Held, though injuries sustained by the accused need not be explained in all circumstances but a different standard would be applied in a case where a specific plea of right of private defence has been raised — Further held, in the event prosecution discharges its primary burden of proof, the onus would shift on the accused but the same would not mean that the burden can be discharged only by examining defence witnesses — Even in the absence of specific plea being raised courts have to see as to whether the plea of exercise of private defence was probable in the facts and circumstances of the case — In the instant case, defence of the accused could not be wished away and it was necessary on the part of the prosecution to explain the injuries on the part of the accused — Courts below committed a manifest error of law in opining that the appellant-accused had not discharged the burden cast upon them* (Paras 26, 27 and 34). *Surendra* v. *State of Maharashtra*, (2006) 11 SCC 434: (2007) 1 SCC (Cri) 490: AIR 2006 SC 3063.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 24-8-2006]

[550] — Ss. 96, 97, 100 & 101 — Plea of private defence — Sustainability — *Held, on facts, could not be ruled out since the totality of circumstances brought on record did not establish guilt of the accused-appellants — Moreover, neither genesis of occurrence had been proved by the prosecution, nor that the right of private defence had been exceeded — IO failed to explain delay in arresting the accused — Prosecution was also obliged to explain the injuries suffered by the accused*

The appellants, together with three others were prosecuted for alleged commission of offence under Sections 147, 148, 324, 302 and 307 r/w Section 149, Penal Code for causing death of two persons. The appellants, besides pleading not guilty also raised a plea of self-defence. During the occurrence the appellants had also suffered injuries on vital parts of their body.

Held :

Genesis of occurrence is shrouded in mystery. The evidence on record do not establish who the initial aggressors were i.e. whether they were the PWs or the appellants. The High Court has found that the prosecution had not been able to prove the charge of rioting. The appellants and others did not have the common object of causing death of the deceased. Indisputably all the appellants were also injured and were admitted as indoor patients in hospital for few days. But they were arrested only after some days. Further, there were motives and counter-motives. Appellant 1 was summoned in a Panchayat meeting for reprimanding him for not furnishing accounts of the temple property. Though it is quite possible that the appellants may have started the quarrel yet it is difficult to believe that despite the presence of large number of persons,

the appellants would kill two persons one after another, without receiving any injury or threat to their lives or bodily injury or without having been not provoked by any of them or in any manner whatsoever. The fact that they were not armed is not disputed. It is not the case of the prosecution that they were carrying sticks with them. It is admitted that Appellant 2 all of a sudden picked up a small knife from the shop of PW 4. The knife has not been identified in the Court. The accusation made as against Appellant 3 that he had assaulted the second deceased with a stick, is not corroborated by medical evidence. The first deceased is said to have received 11 injuries. The prosecution case is that only Appellant 2 caused Injury 8 which was fatal. The deceased has received, according to the autopsy report, two injuries caused by hard and blunt substance. None of the appellants have been attributed of the said overt acts. The other eight injuries, according to the doctor, might have been caused by fall. On the body of the second deceased only one injury was found which is said to have been caused by a bamboo stick by Appellant 1, whereas according to the prosecution witnesses, Appellant 3 also hurled blows on the person of the deceased. How and in what manner the appellants came to have such bamboo sticks in their possession had not been disclosed. All the appellants have suffered at least three injuries each inflicted on them by knife and bottles. The IO failed to explain the cause for delay in arresting the accused. In the facts and circumstances of this case and keeping in view the defence raised by them, it was obligatory on the part of the prosecution to explain the injuries on the persons of the appellants. (Paras 3, 20, 29 to 33)

Keeping in view the totality of the circumstances, the possibility that the appellants have exercised their right of private defence cannot be totally ruled out. Prosecution had made all attempts to suppress a part of the occurrence. The genesis of the occurrence has, thus, not been proved. The totality of the circumstances brought on record do not, thus, point out to the guilt of the appellants. They are, therefore, entitled to be acquitted. (Para 35). *Nagarathinam* v. *State*, (2006) 9 SCC 57: (2006) 3 SCC (Cri) 212: AIR 2006 SC 1736: 2006 Cri LJ 2120.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-4-2006]

2004 Mad LJ (Cri) 830, reversed

[551] — Ss. 96, 97 and 100 to 103 — Self-defence pleaded but accused in his statement under S. 313 CrPC not admitting to have inflicted the fatal blow *— Held, is no ground to reject the plea of self-defence if the evidence of the eyewitnesses reveal facts and circumstances supporting the plea — Criminal Procedure Code, 1973, S. 313*

The trial court considered the plea of self-defence but rejected it on the ground that the appellant did not state in his statement under Section 313 CrPC that he had hit *R* in self-defence. Obviously, an accused cannot be expected to admit that he had inflicted the blow that killed the deceased. Where the plea of the accused, when read with the evidence of the eyewitnesses, brings out a set of facts and circumstances showing that the accused acted in exercise of the right of private defence, the fact that the accused in his Section 313 CrPC statement only referred to the acts of the deceased and his son hitting him and did not admit that he hit back the deceased, is not a ground to reject the plea of private defence. The approach of the trial court to the plea of private defence was erroneous. The High Court did not go into this aspect at all. (Para 24). *Krishnan* v. *State of T.N.*, (2006) 11 SCC 304: (2007) 1 SCC (Cri) 437: AIR 2006 SC 3037: 2006 Cri LJ 3907.

Bench Strength **2**. Coram: *G.P. Mathur* and **R.V. Raveendran**, JJ. [Date of decision: 14-8-2006]

[552] — Ss. 96, 97 and 100 to 105 — Right of private defence — Extent to which may be exercised *— Accused-appellant not able to show that threat on the person of other co-accused was such, or threat of dispossession was such, that he had to hit deceased on forehead with such force that the deceased breathed his last — Held, appellant exceeded his right of private defence* (Para 20). *Jalaram* v. *State of Rajasthan*, (2005) 13 SCC 347: (2006) 2 SCC (Cri) 202: AIR 2006 SC 618: 2006 Cri LJ 528.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 24-11-2005]

[553] — Ss. 97, 99, 100, 101 & 103 — Cross-cases — Interdependence of results in *— Acquittal of complainant party in counter-case filed by accused party, held, has bearing on judging claim of private defence by the accused*

The fact that the prosecution in the counter-case lodged by the accused has resulted in acquittal of the complainant party would also have some bearing in the matter. The injuries on two of the accused had sufficiently been explained. The said injuries, therefore, lose all significance. (Paras 75 and 66). *Triloki Nath* v. *State of U.P.*, (2005) 13 SCC 323: (2006) 2 SCC (Cri) 178: AIR 2006 SC 321: 2005 All LJ 3757.

Bench Strength **2**. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 28-10-2005]

[554] — Ss. 97, 99, 100, 101 & 103 — Right of private defence if arose — Burden of proof *— Held, burden is on accused to show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt*

would be caused to him. Triloki Nath v. *State of U.P.*, (2005) 13 SCC 323: (2006) 2 SCC (Cri) 178: AIR 2006 SC 321: 2005 All LJ 3757.

Bench Strength **2**. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 28-10-2005]

[555] — **Ss. 97 and 100 — Right of private defence of body** — *Merely because accused inflicted one blow each with firewood log on vital parts of the body of deceased, that by itself may not be a ground to reject accused's plea of self-defence as when a person loses his sense, he may act violently — A holistic view of the matter must be taken* (Para 21). *Karuppusamy* v. *State of T.N.*, (2006) 11 SCC 459: (2007) 1 SCC (Cri) 515.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 29-9-2006]

[556] — **Ss. 97 and 100 — Self-defence — Plea of** — *Minor unexplained injuries sustained by accused party — Held, cannot help defence case of exercise of right of self-defence — Moreover, in this case nature of the alleged injuries neither stated by accused nor any injury report of any doctor produced and no doctor examined as a witness in support of such injuries — Hence plea of self-defence not sustainable. Sukumar Roy* v. *State of W.B.*, (2006) 10 SCC 635: (2007) 1 SCC (Cri) 58: AIR 2006 SC 3406: 2006 Cri LJ 4776.

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 31-10-2006]

[557] — **Ss. 97, 100, 101, 103 and 104 — Right of private defence — When arises** — *The need to act in private defence must not have been created by the conduct of the accused in the immediate context of the incident which was likely or intended to give rise to that need — Evidence Act, 1872, Ss. 101 and 103* (Paras 32 and 33). *Triloki Nath* v. *State of U.P.*, (2005) 13 SCC 323: (2006) 2 SCC (Cri) 178: AIR 2006 SC 321: 2005 All LJ 3757.

Bench Strength **2**. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 28-10-2005]

[558] — **Ss. 97, 99, 100, 101, 103, 104 and 302/149 — Right of private defence — Availability — Held, not available to an aggressor** — *Plot in dispute was in possession of accused K — Complainants piling up wood on that land for Holi — Removal of that wood by accused persons objected to by PW 4 (servant of PW 3) orally and without any trespass — Accused chasing PW 4 — On being asked by PW 3 as to why PW 4 was chased, accused attacking the complainant party as a result of which one dying and two sustaining serious injuries — Incident took place 300 paces away from the plot in question — All accused armed with lathis except one who was carrying a gun — No overt act on the part of the complainant — No one on complainant side carrying any weapon except PW 4 who used his lathi to prevent assault on his master PW 3 (aged 74-75 years) — Trivial injuries on accused, explained — Acquittal of complainant party in counter-case lodged by accused — Held, accused not entitled to raise the plea of self-defence both in respect of the property as also the person, being themselves the aggressors*

The accused-appellants were the aggressors. The right of private defence cannot, thus, be claimed by them. (Paras 45, 56 and 75)

The accused-appellants being in possession of the disputed land, were entitled to protect it but having regard to the past practice of performing Holika Dahan on the land in question on the eve of Holi which takes place once in a year, the complainant party evidently did not want to dispossess the accused persons permanently. In law, however, the accused persons could resist trespass. Even when a trespass has been committed, in certain situations, the right of private defence can be used to eject the trespassers. The right of private defence in the situation in question could not have been exercised for preventing trespass into the property or for evicting the trespassers. By the time PW 4 reached near the land, the appellants were already in possession of the land as they had removed the wood, which had been placed on the land by the complainant party. (Paras 36 and 44)

Further, the incident took place 300 paces away from the land in question. PW 3 had gone to chakk. At the time of occurrence he was coming back from his chakk. It is, therefore, not correct to contend that he had sent the servant to the plot in question with a view to tease the appellants and was waiting at some distance with others. (Para 37)

The stand of the appellants that they were attacked upon exhortation of PW 3, cannot be said to be correct. It has not been shown that apart from PW 4 any other person was carrying any weapon. On the other hand, all the appellants were armed with lathis except *J* who was carrying a gun. There is no material on record to show that there had been any overt act on the part of the complainant. In the above circumstances, it is unlikely that the complainant would ask others to assault the appellants. (Para 38)

The fact that the prosecution in the counter-case lodged by the accused has resulted in acquittal of the complainant party would also have some bearing in the matter. The injuries on two of the accused had sufficiently been explained. The said injuries, therefore, lose all significance. (Paras 75 and 66). *Triloki Nath* v. *State of U.P.*, (2005) 13 SCC 323: (2006) 2 SCC (Cri) 178: AIR 2006 SC 321: 2005 All LJ 3757.

Bench Strength **2**. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 28-10-2005]

State of U.P. v. Ram Niranjan Singh, (1972) 3 SCC 66: 1972 SCC (Cri) 386, distinguished on facts

[559] — Ss. 97, 100 and 302 — Self-defence — Plea of, not raised during trial — Raised on basis of certain observation made by High Court in appeal — Sustainability — *High Court's observation that deceased was stabbed by appellant, not in pursuance of any pre-planned attack, but being under impression that deceased was coming to attack him — Held, said observation was made in the context of recording a finding that A-1 and A-2 did not share any common intention with the appellant — Thus, it could not be read out of context to make out a case that the appellant acted in self-defence — Further, such a plea was neither put forth in the statement under S. 313 CrPC nor brought out in the cross-examination of any of the prosecution witnesses* (Para 19). *Pulicherla Nagaraju* v. *State of A.P.*, (2006) 11 SCC 444: (2007) 1 SCC (Cri) 500: AIR 2006 SC 3010: 2006 Cri LJ 3899.

Bench Strength **2**. Coram: *G.P. Mathur* and **R.V. Raveendran**, JJ. [Date of decision: 18-8-2006]

[560] — Ss. 97 secondly — Criminal trespass — Exercise of right of private defence against — Entitlement to — *Owner in possession can resist trespass — In certain situations right of private defence can be used to evict the trespassers — But if trespasser had removed himself or his movable property from the land, right of private defence could not be exercised*

The accused-appellants being in possession of the disputed land, were entitled to protect it but having regard to the past practice of performing Holika Dahan on the land in question on the eve of Holi which takes place once in a year, the complainant party evidently did not want to dispossess the accused persons permanently. In law, however, the accused persons could resist trespass. Even when a trespass has been committed, in certain situations, the right of private defence can be used to eject the trespassers. The right of private defence in the situation in question could not have been exercised for preventing trespass into the property or for evicting the trespassers. By the time PW 4 reached near the land, the appellants were already in possession of the land as they had removed the wood, which had been placed on the land by the complainant party. (Paras 36 and 44)

Further, the incident took place 300 paces away from the land in question. PW 3 had gone to chakk. At the time of occurrence he was coming back from his chakk. It is, therefore, not correct to contend that he had sent the servant to the plot in question with a view to tease the appellants and was waiting at some distance with others. (Para 37). *Triloki Nath* v. *State of U.P.*, (2005) 13 SCC 323: (2006) 2 SCC (Cri) 178: AIR 2006 SC 321: 2005 All LJ 3757.

Bench Strength **2**. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 28-10-2005]

[561] — Ss. 99, 100, 101, 103 and 104 — Right of private defence — Extent to which it may be exercised — *Held, though while exercising the said right a person is not expected to weigh in golden scales on the spur of the moment and in the heat of circumstances, the number of injuries required to disarm the assailant, but the said right cannot be exceeded so as to cause more harm than necessary — Thus, circumstances are required to be viewed with pragmatism* (Paras 33 and 32). *Triloki Nath* v. *State of U.P.*, (2005) 13 SCC 323: (2006) 2 SCC (Cri) 178: AIR 2006 SC 321: 2005 All LJ 3757.

Bench Strength **2**. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 28-10-2005]

[562] — S. 100 — Right of private defence — When available — Factors to be taken into consideration — *Having regard to nature of injuries received by accused and caused by him to deceased, imminence of threat to accused's security and other circumstances, held on facts, accused's claim of right of private defence in causing death of deceased not sustainable*

According to the prosecution case, six accused went to the disputed land armed with axes and crowbars and started digging pits in order to fix poles therein for construction of a shop house. The deceased *U*, his father *K* and his uncle deceased *B* reached the spot and objected to the act of the accused and suggested that they should get the land measured by an Amin so as to verify whether the land belonged to them or not. *U* then caught hold of one of the poles fixed by the accused and tried to uproot it. Enraged by this act, the accused persons assaulted the victims with axes and crowbars causing death of *U* and *B* and injuries to *K*. Plea taken by one of the accused was that the deceased persons and *K* had come to the spot armed with deadly weapons and attacked him and he in exercise of right of self-defence of person and property whirled the axe which he was holding whereby the deceased persons sustained injuries and died. Another accused had set up the defence of alibi. All the six accused were tried for offences punishable under Sections 148, 302/149 and 323/149 IPC. The trial court did not accept the defence plea relating to right of private defence and alibi. Relying upon the evidence of the injured witness *K* and two other eye-witnesses, it concluded that the intention of the accused was to cause death of the deceased and to cause injuries to *K* and accordingly, it convicted them and sentenced them to undergo life imprisonment for causing death of two persons.

Dismissing the appeal,

Held :

In order to find out whether the right of private defence is available or not, the injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities, are all relevant factors to be considered. In the present case, the evidence reveals that there was no imminent danger to the property or person of the accused-appellant who had claimed right of self-defence from the act of *U* who had merely gone to the spot and asked the accused party to get the measurement of the land and tried to dislodge one of the poles fixed by the accused party. There was neither any occasion nor any cause to attack the complainant party with weapons like axes and crowbars and to cause injuries on the vital parts of the body including the head. There is no evidence on record to show that any of the accused-appellants has sustained injuries to deduce the factum of imminent danger to their person or property. (Para 24)

In overall consideration of the evidence, there is no infirmity in the conviction of the accused-appellants. However, the accused-appellants must be convicted and sentenced under Section 302 read with Section 34 IPC for life imprisonment instead of Section 302 simpliciter. (Para 25). *Dhaneswar Mahakud* v. *State of Orissa*, (2006) 9 SCC 307: (2006) 2 SCC (Cri) 505: AIR 2006 SC 1727: 2006 Cri LJ 2113.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.P. Naolekar**, JJ. [Date of decision: 5-4-2006]

[563] — Ss. 100 and 101 — Apprehension of death or bodily injury in the mind of the accused — Determination of — *Held, the same would have to be determined in the context of the number of people assembled to assault them, the manner in which they were assaulted, the arms used, as also the situs of injury received by them — A person apprehending death or bodily injury cannot be expected to weigh in golden scales, on the spur of moment and in the heat of circumstances the number of injuries required to disarm the assailants* (Paras 23 to 28). *Nagarathinam* v. *State*, (2006) 9 SCC 57: (2006) 3 SCC (Cri) 212: AIR 2006 SC 1736: 2006 Cri LJ 2120.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-4-2006]

[564] — Ss. 100 and 101 — Right of private defence of an armed man against a woman — When can arise — *Accused hacking to death his brother and then his sister-in-law — Held, murder of the sister-in-law in the circumstances could not be in private defence — A woman by her feminine nature and feeble body, ordinarily would not pose threat or danger to the life of a well-bodied man with a kulhari (axe) — Evidence Act, 1872, S. 114 — "Common course of... human conduct" — Right of private defence of able bodied man armed with an axe against a woman — If can arise* (Para 4). *State of U.P.* v. *Chatur Singh*, (2005) 13 SCC 360: (2006) 2 SCC (Cri) 245: AIR 2006 SC 745: 2006 Cri LJ 545.

Bench Strength **2**. Coram: **H.K. Sema** and *C.K. Thakker*, JJ. [Date of decision: 17-11-2005]

[565] — Ss. 102 and 105 — Commencement and continuance of the right of private defence of body and property — *Held, the right commences, as soon as a reasonable apprehension of danger to the body arises from an attempt, or threat to commit the offence and lasts so long as the reasonable apprehension of the danger to the body continues* (Para 11). *Raj Pal* v. *State of Haryana*, (2006) 9 SCC 678: (2006) 3 SCC (Cri) 361.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 19-4-2006]

[566] — Ss. 103, 96 and 97 — Right of private defence of property — Plea of — Sustainability — *Held, proof of possession of property and trespass thereon necessary to sustain the plea — Appellants, in the instant case, not contending that they were in possession of the disputed land, and hence, right of private defence could not be raised* (Paras 9 and 10). *Ashok Kumar* v. *State of T.N.*, (2006) 10 SCC 157: (2006) 3 SCC (Cri) 497: AIR 2006 SC 2419: 2006 Cri LJ 2931.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-5-2006]

— Ss. 107 and 108 *See* CRIMINAL LAW — 'Particular Statutes' — Maharashtra Control of Organised Crimes Act, 1999 (30 of 1999), Ss. 3(2) and 24, (2007) 1 SCC 242

[567] — Ss. 141 and 149 — Contention that when more than five persons armed with swords, etc. had entered the house of the victim with the common object of injuring him and had injured him, and only four persons were found guilty, conviction under S. 149 could not be maintained — *Held, such contention has no merit*

Section 149 provides that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence. Section 141 requires a minimum of five persons for being designated as an "unlawful assembly". (Para 17)

In the present case accused before the trial court were 27 in number. PW 4 specifically named 22 per-

sons and further named the four out of them who assaulted him. PW 3 named 12 persons who came as a group. Other eyewitnesses also clearly stated that the appellants with other accused came to attack *S*. The trial court acquitted all the 27 accused. In the appeal filed by the State, leave was granted by the High Court only as regards five accused, as they were specifically named as the persons wielding weapons and causing injuries to *S* and others and as the names of others were mentioned only as being members of the assembly without any specific act being attributed to them. The High Court gave benefit of doubt to one of the five (*A*) though his presence as a member of the group was accepted. This resulted in conviction of only four. This does not mean that there is no finding that there was an unlawful assembly. When the evidence clearly shows that more than five persons armed with swords, spears, etc. had come to the house of *S* with the common object of causing injury, and injured him, the mere fact that several accused were acquitted and only four were convicted, does not enable the four who were found guilty to contend that Section 149 is inapplicable. (Para 19). *Kallu* v. *State of M.P.*, (2006) 10 SCC 313: (2006) 3 SCC (Cri) 546: AIR 2006 SC 831: 2006 Cri LJ 799.

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 4-1-2006]

— Ss. 143, 147, 341, 307, 326 and 149 *See* CRIMINAL TRIAL — 'Sentence' — Generally, (2006) 10 SCC 673

[568] — S. 148 — Unlawful assembly — Need for finding in respect of — *Accused must be shown to be members of unlawful assembly in order to convict them under S. 148 — No finding recorded by High Court that appellants A-3 to A-7 were members of unlawful assembly — A-5 to A-7 had been acquitted of charge under Ss. 307/149 and A-3 and A-4 had not even been charged under Ss. 307/149 — Held, there was neither any finding nor any material on record on the basis of which appellants could be convicted under S. 148* (Para 5). *Arjunan* v. *State*, (2005) 13 SCC 454: (2006) 2 SCC (Cri) 261.

Bench Strength **2**. Coram: *B.P. Singh* and *S.H. Kapadia*, JJ. [Date of decision: 15-7-2005]

— Ss. 148 and 302 r/w S. 149 *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 397, 401 and 378, (2006) 8 SCC 641

— S. 149 *See also* S. 34, above

[569] — S. 149 — Applicability of — Pre-concert by way of a meeting of persons of unlawful assembly as to the common object, held, not necessary — *If a common object is adopted by all the persons and shared by them, it would serve the purpose* (Para 68). *Triloki Nath* v. *State of U.P.*, (2005) 13 SCC 323: (2006) 2 SCC (Cri) 178: AIR 2006 SC 321: 2005 All LJ 3757.

Bench Strength **2**. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 28-10-2005]

Kashiram v. State of M.P., (2002) 1 SCC 71: 2002 SCC (Cri) 68; Vajrapu Sambayya Naidu v. State of A.P., (2004) 10 SCC 152: 2004 SCC (Cri) 1768, distinguished on facts

[570] — S. 149 — Elements of — Unlawful assembly having a common object to commit certain crime — *When such crime is committed by one or more of the members of the assembly, then every member of the assembly, irrespective of whether he actually committed the crime or not, would be liable for the commission of the crime on the basis of constructive guilt — Common object and common intention — Distinction restated — On facts held, offence under S. 302 r/w S. 149 made out*

Section 149 of the Penal Code postulates an assembly of 5 or more persons having a common object i.e. one of those named in Section 141 of the Penal Code and then doing of the act as by the members of it in prosecution of that object. The basis of constructive guilt under Section 149 is mere membership of an unlawful assembly. Under Section 149, if the accused is a member of an unlawful assembly, the common object of which is to commit a certain crime, and such a crime is committed by one or more of the members of that assembly, every person who happens to be a member of that assembly would be liable for the commission of the crime being a member of it irrespective of the fact whether he has actually committed the criminal act or not. There is a distinction between the common object and common intention. The common object need not require prior concert and a common meeting of minds before the attack, and an unlawful object can develop after the assembly has gathered before the commission of the crime at the spot itself. There need not be prior meeting of the mind. It would be enough that the members of the assembly which constitutes five or more persons, have common object and that they acted as an assembly to achieve that object. In substance, Section 149 makes every member of the common unlawful assembly responsible as a member for the act of each and all merely because he is a member of the unlawful assembly with common object to be achieved by such an unlawful assembly. At the same time, one has to keep in mind that mere presence in the unlawful assembly cannot render a person liable unless there was a common object and that is shared by that person. The common object has to be found and can be gathered from the facts and circumstances of each case. (Para 13)

From the facts found in the present case it appears that the appellants claimed ownership of the land in question, when they came to know that the deceased and their men ploughed the land which they claimed

to be theirs, they armed with weapons came to the place of incident to vindicate their right to the land by show of force or use of force. The intention to assert the right by force is apparent from the fact that the appellants were armed with deadly weapons such as sword, tangi and farsa and some of them were carrying lathis. All the persons came together at the spot armed with weapons and immediately after reaching the spot, after short exchange of words, they started assaulting and caused grievous injuries to two persons who died on the spot. The nature of the injuries found on the deceased gives clear indication of a common intent of the assembly to go to the extent of causing death of the persons who have ploughed their land. All the members reaching the spot together armed with weapons and immediate attack on the persons present there, clearly exhibits the intention of the unlawful assembly. In the facts and circumstances of the case the common object of the unlawful assembly to do away with the deceased persons can be safely inferred. (Para 14). *Rabindra Mahto* v. *State of Jharkhand*, (2006) 10 SCC 432: (2006) 3 SCC (Cri) 592: AIR 2006 SC 887: 2006 Cri LJ 957: (2006) 1 KLJ 431.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.P. Naolekar**, JJ. [Date of decision: 6-1-2006]

[571] — S. 149 — Ingredients of — Membership of unlawful assembly at the time of commission of the offence must be proved — Common object — Concept of — Different from common intention — *Common object can be formed at the spur of the moment — When it was formed would depend upon facts and circumstances — Conduct of members of the assembly relevant*

Section 149 IPC creates a specific and distinct offence. There are two essential ingredients thereof:

(*i*) commission of an offence by any member of an unlawful assembly, and

(*ii*) such offence must have been committed in prosecution of the common object of that assembly or must be such as the members of that assembly knew to be likely to be committed. (Para 11)

It is, thus, essential to prove that the person sought to be charged with an offence with the aid of Section 149 was a member of the unlawful assembly at the time the offence was committed. (Para 12)

The concept of common object, is different from common intention. It is true that so far as common object is concerned no prior concert is required. Common object can be formed on the spur of the moment. Course of conduct adopted by the members of the assembly, however, is a relevant factor. At what point of time the common object of the unlawful assembly was formed would depend upon the facts and circumstances of each case. (Para 10). *Munna Chanda* v. *State of Assam*, (2006) 3 SCC 752: (2006) 2 SCC (Cri) 43: 2006 Cri LJ 1632.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 24-2-2006]

[572] — S. 149 — Joint liability — Common object, sharing of — Single blow given by A-1 on the left side of the chest of the deceased resulting in his death — *Intention of the other accused to commit murder of the deceased not proved — None giving any blow to the deceased with the weapons allegedly carried by them — Held, charge under Ss. 302/149 against the others unsustainable*

It is now settled law that under Section 149 IPC, the liability of other members for the offence committed during the continuance of the occurrence rests upon the fact whether the other persons knew before hand that the offence actually committed was likely to be committed in prosecution of the common object. Such knowledge may reasonably be collected from the nature of the assembly, arms or behaviour on or before the scene of occurrence. If such knowledge may not reasonably be attributed to the other members of the assembly then their liability for the offence committed during occurrence does not arise. On scrutiny of the entire evidence on record, it is found that the conviction of the other accused persons is not sustainable and their appeal deserves to be allowed. (Para 13). *Bunnilal Chaudhary* v. *State of Bihar*, (2006) 10 SCC 639: (2007) 1 SCC (Cri) 66: AIR 2006 SC 2531: 2006 Cri LJ 3297.

Bench Strength **2**. Coram: *Dr. Ar. Lakshmanan* and **Lokeshwar Singh Panta**, JJ. [Date of decision: 5-7-2006]

[573] — S. 149 — Knowledge of offence likely to be committed — *Scope and ambit — Reiterated*

The members of the unlawful assembly can be held liable under Section 149 IPC, if it is shown that they knew beforehand that the offence actually committed was likely to be committed in prosecution of the common object. It is true that the common object does not require prior concert and a common meeting of minds before the attack. It can develop even on the spot but the sharing of such an object by all the accused must be shown to be in existence at any time before the actual occurrence. (Para 21). *Mohinder Singh* v. *State of Punjab*, (2006) 10 SCC 418: (2006) 3 SCC (Cri) 578: AIR 2006 SC 1639.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.P. Naolekar**, JJ. [Date of decision: 24-3-2006]

[574] — S. 149 — Many more persons put on trial than named in FIR — Caution to be exercised by court — *Fifteen persons named in FIR while 39 persons put on trial — Held, in such cases High Court should consider the matter more closely — A number*

of contentions were raised by the appellants in appeal and it was expected of the High Court to deal with each one of them — High Court erred in dismissing the appeal in a slipshod manner (Para 13). *Sabbi Mallesu* v. *State of A.P.*, (2006) 10 SCC 543: (2007) 1 SCC (Cri) 142: AIR 2006 SC 2747: 2006 Cri LJ 4038.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 12-7-2006]

[575] — S. 149 [Ss. 302/149 or Ss. 326/149] and S. 34 [Ss. 302/34] — Common object to kill or to cause grievous hurt — Determination of — *Plot in dispute was in possession of accused K — Complainants piling up wood on that land for Holi — Removal of that wood by accused persons objected to by PW 4 (servant of PW 3) orally and without any trespass — Accused chasing PW 4 — On being asked by PW 3 as to why PW 4 was chased, accused attacking the complainant party — On the side of complainant party, two sustaining serious injuries and one N, who came to the spot accidentally, dying due to gunshot fired at him by J on exhortation of T — Considering the peculiar facts and circumstances, held, all accused had no common object to kill but to cause grievous hurt to complainant party and, therefore, liable to be convicted under S. 326 r/w S. 149 IPC — But, T and J also liable to be convicted under S. 302 r/w S. 34 as they developed a common intention to kill N on the spot*

When a large number of persons assembled with a gun and other weapons having in mind the dispute over the land in question, they must be held to have found common knowledge that by reason of their act, somebody may at least be grievously injured. Having regard to the peculiar facts and circumstances of this case, the appellants and the other accused cannot be said to have formed a common object to kill any person, or to make an attempt in that behalf in view of the manner in which the occurrence took place. Their common object appears to be to teach PW 3 and others, a lesson for making attempts to burn Holika by causing grievous injuries to them. Therefore all the accused persons are found guilty under Sections 326/149 IPC. But, only *T* exhorted *J* to kill *N* who came to the spot accidentally. On that exhortation only *J* fired from his gun as a result whereof *N* died. Hence, *T* along with *J* developed a common intention in that behalf on the spot. Both are, therefore, liable to be convicted under Sections 302/34 IPC. (Paras 67, 80, 81 and 82). *Triloki Nath* v. *State of U.P.*, (2005) 13 SCC 323: (2006) 2 SCC (Cri) 178: AIR 2006 SC 321: 2005 All LJ 3757.

Bench Strength **2**. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 28-10-2005]

— **S. 153-B** *See* CRIMINAL PROCEDURE CODE, 1973, S. 196(1-A), (2006) 6 SCC 728

— **S. 161** *See* PREVENTION OF CORRUPTION ACT, 1947, S. 5(2) r/w S. 5(1)(d), (2006) 1 SCC 407

— **Ss. 161 to 165-A [prior to their omission] — Applicability** *See* PREVENTION OF CORRUPTION ACT, 1988, Ss. 8 and 9, (2007) 1 SCC 1

— **S. 201** *See* PENOLOGY, (2006) 4 SCC 740

[576] — S. 201 — Causing disappearance of evidence — *Deceased complaining of acute stomach pain after consuming "prasad" not taken to any doctor, nor any doctor called, nor any medical treatment administered to her — Dead body secretly and clandestinely cremated causing disappearance of evidence of offence, without even intimating her parents living only a few miles away — Held, appellants rightly convicted under S. 201* (Paras 38 and 39). *Ram Badan Sharma* v. *State of Bihar*, (2006) 10 SCC 115: (2007) 1 SCC (Cri) 166: AIR 2006 SC 2855: 2006 Cri LJ 4070.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 21-8-2006]

[577] — S. 201 — Ingredients — Whether accused had knowledge or had reason to believe commission of the offence (murder in this case) — *While injured person (who later succumbed to the injuries) was being carried in a cot by PWs to hospital, accused-appellants not only assisted the main accused (who had caused the injuries) in snatching the cot from the PWs but carried away the cot themselves at the gun point — Held, evidence shows appellants had knowledge or likelihood of the offence — Appellants rightly convicted under S. 201 — But in view of the fact that appellants were aged above 70 years and were not connected with the first part of the offence (causing injuries to the deceased), they should be sentenced to the period of imprisonment already undergone by them*

The ingredients of Section 201 of the Penal Code are as under:

(1) that an offence has been committed;

(2) that the accused knew or had reason to believe the commission of such offence;

(3) that with such knowledge or belief he—

(*a*) caused any evidence of the commission of that offence to disappear, or

(*b*) gave any information respecting that offence which he then knew or believed to be false;

(4) that he did as aforesaid, with the intention of screening the offender from legal punishment;

(5) if the charge be of an aggravated form, as in the present case, it must be proved further that the offence in respect of which the accused did as in (3) and (4) was punishable with death, or with imprisonment for life or imprisonment extending to ten years. (Para 17)

In this case the deceased had been injured. Whether he was dead at that point of time or not is not of much importance inasmuch when the second incident took place an offence had already been committed. The question, however, would be as to whether the appellants before us had the requisite knowledge of the commission of the said offence or they had a reason to believe that an offence had been committed. (Paras 18 and 19)

From the conspectus of events and the manner in which the appellants are said to have taken part in the commission of crime, it is clear that they had the requisite knowledge about the commission of an offence. The very fact that an injured person was being carried out to the hospital in a cot and the appellants not only assisted the main accused persons in snatching away the cot, two of them carried the cot themselves and two others were armed with firearms clearly establishes their knowledge about commission or the likelihood of offence. In view of the concurrent finding of fact by both the courts, no case has been made out for exercising of the Supreme Court's jurisdiction under Article 136 of the Constitution. (Paras 27 and 34)

However, having regard to the fact that all the four appellants are above 70 years of age and furthermore in view of the fact that as they were not connected with the first part of the occurrence, interest of justice would be subserved if they are sentenced to the period already undergone by them (five months, three months fifteen days, seven months and four months respectively). (Para 35). *Budhan Singh* v. *State of Bihar*, (2006) 4 SCC 740: (2006) 2 SCC (Cri) 402: AIR 2006 SC 1959: 2006 Cri LJ 2451.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 25-4-2006]

[578] — **S. 228-A — Object of** — *Restriction thereunder regarding printing or publishing the name or any matter which may make known the identity of any person against whom a sexual offence is alleged or found to have been committed — Scope of — Held, does not relate to printing or publication of judgment of the High Court or the Supreme Court — But keeping in view the social object of S. 228-A, held, the name of the victim of such offence should not be indicated in the judgments of the courts* (Para 7). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

[579] — **Ss. 228-A and 376 — Disclosure of identity of the victim of certain offences — Impermissibility** — *To prevent social victimisation or ostracism of the victim of a sexual offence, courts advised not to name the victim in their judgments* (Para 3). *Om Prakash* v. *State of U.P.*, (2006) 9 SCC 787: (2006) 3 SCC (Cri) 401: AIR 2006 SC 2214: 2006 Cri LJ 2913.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 11-5-2006]

— Ss. 292 and 293 — "Obscenity" — Meaning of — Restriction of freedom of expression on ground of obscenity — Considerations and concerns involved *See* CONSTITUTION OF INDIA — 'Article 19' — Article 19(2) — Reasonable restrictions, Art. 19(2), (2007) 1 SCC 143

— Ss. 292 and 293 — "Obscenity" — What is — Held, nudity alone is not enough to make material legally obscene *See* CONSTITUTION OF INDIA, Art. 19(2), (2007) 1 SCC 143

— Ss. 292 and 293 — "Obscenity" — Standard to be adopted for judging obscenity *See* CONSTITUTION OF INDIA — 'Article 19' — Article 19(2) — Reasonable restrictions, Art. 19(2), (2007) 1 SCC 143

— Ss. 292 and 293 — Obscenity and art — Test to be applied in determining whether work in question is obscene or a work of art — Role of experts *See* CONSTITUTION OF INDIA — 'Article 19' — Article 19(2) — Reasonable restrictions, Art. 19(2), (2007) 1 SCC 143

— Ss. 292 and 293 — Protection of minors/children from harmful and disturbing materials — Sufficiency of provisions under *See* CONSTITUTION OF INDIA — 'Article 19' — Article 19(1)(a) — Freedom of Press, Arts. 19(1)(a) & (2), (2007) 1 SCC 143

— Ss. 292 and 293 — Publication whether "obscene" — Approach to be taken — Need for publication to be viewed as a whole *See* CONSTITUTION OF INDIA — 'Article 19' — Article 19(2) — Reasonable restrictions, Art. 19(2), (2007) 1 SCC 143

[580] — **Ss. 299 and 300 — Distinction between — Reiterated**

In the scheme of IPC "culpable homicide" is the genus and "murder", its specie. All "murder" is "culpable homicide" but not vice versa. Speaking generally, "culpable homicide" sans "special characteristics of murder is culpable homicide not amounting to murder". For the purpose of fixing punishment, proportionate to the gravity of the generic offence, IPC practically recognises three degrees of culpable homicide. The first is, "culpable homicide of the first degree" which is the gravest form of culpable homicide and defined in Section 300 as "murder". The second is "culpable homicide of the second degree" punishable under first part of Section 304. Lastly, there is "culpable homicide of third degree" which is the lowest type of culpable homicide and punishable under Section 304 Part II. (Para 14)

Clause (*b*) of Section 299 corresponds with clauses secondly and thirdly of Section 300. The distinguishing feature of the mens rea requisite under clause secondly is the knowledge possessed by the offender regarding the particular victim being in such

a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the "intention to cause death" is not an essential requirement of clause secondly. Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. Clause (*b*) of Section 299 does not postulate any such knowledge on the part of the offender. (Paras 16 and 17)

In clause thirdly of Section 300, instead of the words "likely to cause death" occurring in the corresponding clause (*b*) of Section 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (*b*) of Section 299 and clause thirdly of Section 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word "likely" in clause (*b*) of Section 299 conveys the sense of probability as distinguished from a mere possibility. The words "bodily injury ... sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature. For cases to fall within clause thirdly it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. (Paras 17 to 22)

Under clause thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied i.e. (*a*) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (*b*) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death viz. that the injury found to be present was the injury that was intended to be inflicted. If the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. (Paras 22 and 23)

Clause fourthly of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons — being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid. (Paras 22 and 23)

The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each other, that it may not be convenient to give a separate and clear cut treatment to the matters involved in the second and third stages. (Para 25). *Raj Pal* v. *State of Haryana*, (2006) 9 SCC 678: (2006) 3 SCC (Cri) 361.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 19-4-2006]

[581] — Ss. 299 and 300 — Ingredients of, and difference between — *Reiterated* (Paras 8 to 10). *Laxman* v. *State of M.P.*, (2006) 11 SCC 316: (2007) 1 SCC (Cri) 449: AIR 2006 SC 3240: 2006 Cri LJ 4626.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 18-9-2006]

[582] — Ss. 299 & 304 or Ss. 300 & 302 — "Culpable homicide not amounting to murder" and "murder" — Distinction between — Case-law with clausewise reference to the said provisions discussed — *Single shot fired in darkness at 9.15 p.m. after enquiring the identity, to teach the victim a lesson — Injury culminating in death — Appropriate punishment — In the present case, accused getting angry with the victim on the suspicion that the victim had acted as a police informer enabling the police to recover poppy husk from the accused — Taking of land on lease by the victim's father from the brother of the accused, another reason for the anger of the accused — Accused intercepting the victim in the evening while he was on the way to his fields and declaring that victim would have to pay the price for the said two events — About two hours later, at about 9.15 p.m., the victim while passing through his fields, spotting in the torchlight the accused armed with a gun approaching him — After finding out the identity of the victim, the accused declaring that he would teach the victim a lesson — Accused then firing a shot hitting the victim's right thigh — Doctor, after medical examination, declaring the injury to be dangerous to life — In such circumstances and in the absence of the intention or knowledge postulated in various*

clauses of S. 300 IPC, conviction of the accused under S. 302, held, not sustainable and should have been rather in terms of S. 304 Pt. II — Hence, imprisonment for 7 years sufficient

V followed agricultural pursuits in a village. *P* was his brother and *S* was the son of *P*. Sometime ago, the police had recovered poppy husk from *R*, the appellant herein. *R* suspected that *S* had given secret information to the police enabling the said recovery. Subsequently, *P* took a piece of land on lease from *R*'s brother. *R* took ill of it. One evening while *V* and *S* were going to their fields, *R* happened to meet them and declared that *S* would have to pay the price for the said two matters. A few hours later, at about 9.15 p.m. when *V* and *S* were passing through their fields, *R* was spotted in the torchlight approaching towards them. *R* had a gun with him. *R* required them to disclose their identity. When *V* and *S* disclosed their identity, *S* raised a "lalkara" saying that he would teach them a lesson for the said two acts. *R* then fired a shot at *S* which hit on his right thigh. *S* fell down and *V* raised an alarm. *R* fled away. On hearing the alarm *P* reached the spot. *V* and *P* took *S* to an hospital. After medical examination, the doctor opined that the injury was dangerous to life. That duration was fresh and that it was caused by a firearm. The SI/SHO reached the hospital. *V*, the complainant met him, gave his statement and got his case registered. *S* succumbed to the injury in the hospital. A doctor conducted the post-mortem examination. On completion of investigation, charge-sheet was filed and *R* was charged for offences under Section 302 IPC and Section 27 of the Arms Act. The trial court found him guilty on both the counts and sentenced him under Section 302 IPC to undergo RI for life and to pay a fine of Rs 10,000 with default stipulation, and under Section 27 of the Arms Act to undergo RI for one year and to pay a fine of Rs 500 with default stipulation. Before the High Court, *R* contended, inter alia, that there was only one injury that too on the thigh and, therefore, the case was not covered under Section 302 IPC. However, the High Court upheld the conviction. *R* then filed the present appeal by special leave.

Before the Supreme Court, the appellant *R* contended that the facts of the case ruled out the application of Section 302 IPC and at most, they attracted Section 326 IPC. It was also submitted that *R* had already suffered custody for more than 6 years and 8 months.

On the other hand, the State supported the impugned judgment.

After discussing case-law on the question of distinction between "murder" and "culpable homicide not amounting to murder" and ingredients thereof with clausewise reference to Sections 300 and 299 IPC and allowing the appeal,

Held :

When the factual background of the present case is tested on the principles set out in case-law, it has to be held that the conviction under Section 302 IPC cannot be maintained and the conviction has to be in terms of Section 304 Part II IPC. Custodial sentence of 7 years would meet the ends of justice. (Para 28). *Rajinder* v. *State of Haryana*, (2006) 5 SCC 425: (2006) 2 SCC (Cri) 469: AIR 2006 SC 2257: (2006) 3 KLT 218: 2006 Cri LJ 2926.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 5-6-2006]

[583] — S. 300 Thirdly — Applicability — Appellant giving a severe blow on the head of the deceased with an iron rod, which ultimately resulting in his death — *Contention of appellant that offence made out was not one punishable under S. 302 — Evidence of eyewitnesses found to be consistent, credible and convincing — Moreover, each witness stating only what he had seen and their evidence appearing natural and true — Role played by the appellant specifically deposed to by PW 6 and PW 15, while others who had not actually seen him assaulting the deceased not stating so — Held, in such circumstances it cannot be said that the appellant did not intend to cause the injury which was sufficient in the ordinary course of nature to cause death — The act complained of was not shown to be covered by any of the exceptions so as to amount to culpable homicide not amounting to murder — Appellant did intend to cause the injury on the head of the deceased, and the aforesaid injury intended to be inflicted was found to be sufficient in the ordinary course of nature to cause death — Hence, the case squarely falls under S. 300 Thirdly* (Paras 6 and 7). *Pralhad Krishant Patil* v. *State of Maharashtra*, (2006) 9 SCC 211: (2006) 2 SCC (Cri) 621.

Bench Strength **2**. Coram: *B.P. Singh* and *Arun Kumar*, JJ. [Date of decision: 7-12-2005]

[584] — S. 300 Exception I — Grave and sudden provocation — *Held, not proved by the facts — Murder of wife — Accused suspecting wife's fidelity because of her illicit intimacy with PW 2 — Few days prior to the incident, deceased had left accused's house and started residing with PW 2 — Accused communicated to deceased through PW 3 to return home but deceased informed that she would come sometime later — This enraged the accused, who picked a baditha from a carpenter, went to the house of PW 2 and dealt blows with baditha to the deceased and killed her — Held, accused cannot be said to have*

committed the murder under grave and sudden provocation of his wife for not abiding by his direction

This cannot be said to be sudden provocation that the wife did not come to the house of the accused on message being sent to her. The accused had reasonable time to go to the carpenter's shop for picking up baditha and dealt blows to the deceased with the baditha. This was not a grave and sudden provocation to give a cause to such fatal injuries to his wife. Therefore, this case cannot be covered under the clause of grave and sudden provocation. (Para 8). *Namala Subba Rao* v. *State of A.P.*, (2006) 10 SCC 557: (2007) 1 SCC (Cri) 155.

Bench Strength **2**. Coram: *G.P. Mathur* and **A.K. Mathur**, JJ. [Date of decision: 17-10-2006]

[585] — S. 300 Exception 1 and Exception 4 — Comparison between

Both in Exception 1 and in Exception 4 there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reasons and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. (Para 9). *Sandhya Jadhav* v. *State of Maharashtra*, (2006) 4 SCC 653: (2006) 2 SCC (Cri) 394: (2006) 2 KLT 413: 2006 Cri LJ 2111.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 31-3-2006]

[586] — S. 300 Exceptions 1 and 4 — Difference between

In Exception 1 there is total deprivation of self-control whereas in case of Exception 4 there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. (Para 13). *Pappu* v. *State of M.P.*, (2006) 7 SCC 391: (2006) 3 SCC (Cri) 283: AIR 2006 SC 2659.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 11-7-2006]

[587] — S. 300 Exceptions 1 and 4 — Difference between — *Reiterated*

The Fourth Exception of Section 300 IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place,

for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. (Para 11). *Lachman Singh* v. *State of Haryana*, (2006) 10 SCC 524: (2007) 1 SCC (Cri) 123: AIR 2006 SC 2763: 2006 Cri LJ 4041.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 28-7-2006]

[**588**] — **S. 300 Exceptions 1 & 4, Ss. 300 thirdly and 302 — Ingredients — Applicability** — *Unprovoked knife attack on vital parts of body of deceased after he fell into a gutter resulting in his death — Knife-blows inflicted with the intention to cause bodily injuries and such injuries were sufficient in ordinary course of nature to cause death — Inference of pre-existing malice and bias of appellant against the deceased from the number and nature of knife-blows inflicted — The assailants also took undue advantage of the situation — Held on facts, ingredients of Exceptions 1 and 4 of S. 300 not satisfied — Cl. thirdly of S. 300 attracted — Conviction under S. 302 justified*

The parties were members of a joint family. A partition had taken place between two brothers, Accused 1 and *P*. Accused 2 to 5 belong to the branch of Accused 1 and the deceased and the complainant were sons of *P*. On the day of the occurrence an almond tree was being planted in their side of open plot by the accused. PW 8 and the deceased were standing in their portion of the open plot to which Accused 2 and 3 asked them as to what they had been watching. They replied that they were standing on their own plot belonging to their father. The accused on that rushed towards them with weapons. Accused 1 had an iron rod, Accused 2 had a knife, Accused 3 was carrying a pickaxe and Accused 4 a shovel in their hands. Seeing the accused persons advancing towards them the complainant and the deceased started retreating southwards i.e. towards the plot of the accused. They fell in a gutter. The appellant and Accused 3 assaulted the deceased with knife and pickaxe respectively whereas two co-accused assaulted PW 8 with the weapons in their hands. The appellant inflicted knife-blows, one on the chest below the left nipple causing injury to the left lung and the other on the side near the armpit of the deceased whereas Accused 3 inflicted blow on his stomach. The deceased was shifted to hospital where he died. According to the doctor who conducted post-mortem examination, the lung injury by itself was sufficient in the ordinary course of nature to cause death of the deceased. The trial court convicted the appellant under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs 10,000. The trial court convicted Accused 1 and 4 under Section 324 IPC but acquitted the others of all the charges. The High Court in appeals affirmed the judgment passed by the trial court but modified the sentence in respect of Accused 1 and 4 to the period already undergone. The present appeal was admitted on a limited question as to nature of the offence, as to whether it was covered by Exceptions 1 and 4 of Section 300 or not.

Dismissing the appeal,

Held :

The complainant and the deceased cannot be said to have caused any annoyance to the accused while they were planting the almond tree. It was the appellant and his brother who started exchange of words by asking as to what they had been seeing. The answer by the complainant to the effect that they had been standing on their own land cannot be said to be a cause for the accused being greatly provoked so as to cause bodily injuries on the deceased and the complainant. The appellant and his companions who were armed with weapons assaulted the deceased and the complainant who were unarmed and must have been taken by surprise. Conceivably Appellants 1, 3 and 4 were carrying iron rod, pickaxe and shovel respectively for the purpose of the plantation of the tree, but the knife, which was the weapon of offence and was being carried by the appellant herein, was not required for the said purpose. Why he was carrying such a big knife remains unexplained. The complainant and the deceased were assaulted in the gutter itself. They were not carrying any weapon whereas the accused were carrying deadly weapons. The effect of the assault with deadly weapons on the vital parts of the body of the deceased by the appellant must be considered in the aforementioned factual background. The chest injury went right up to the right (*sic* hilum) of the lung. The appellant herein did not restrain himself after inflicting one injury. He inflicted other and further injury also. The injuries, in view of the post-mortem report, admittedly were more than one. It is, thus, not a case where only one injury was inflicted by the accused on sudden provocation. (Paras 14, 15, 19 and 20)

In this case Exception 1 has no application as the appellant cannot be said to have committed the offence whilst deprived of the power of self-control by grave and sudden provocation, as has been noticed hereinbefore, that in the facts and circumstances of the case the deceased and the complainant cannot be said to have caused any provocation to the appellant. (Para 25)

The ingredients of Exception 4 are (*i*) there must be a sudden fight; (*ii*) there was no premeditation; (*iii*)

the act was committed in the heat of passion; and (*iv*) the assailant had not taken any undue advantage or acted in a cruel manner. In the event the said ingredients are present, the cause of quarrel would not be material as to who offered the provocation or started assault. Indisputably, however, the occurrence must be sudden and not premeditated and the offender must have acted in a fit of anger. In this case even if it be assumed that responses to the questions put to the deceased or the complainant caused provocation, the same evidently was because of the pre-existing malice and the bias which the appellant had against them. Moreover, the manner in which the deceased and the complainant were assaulted shows that the assailants took undue advantage of the situation as they fell into the gutter and were, thus, in a helpless condition. (Paras 27, 28 and 30)

The distinction between the offences of culpable homicide and murder is the presence of special mens rea which consists of four mental attitudes in the presence of any of which the lesser offence becomes greater. These attitudes are stated in Section 300 IPC as distinguishing murder from culpable homicide not amounting to murder. No hard-and-fast rule, however, can be laid down as different situations may arise having regard to the factual matrix involved therein. In the present case the reported blows on the body of the deceased evidently were done with an intention to cause bodily injuries to him and such injuries were sufficient in the ordinary course of nature to cause death. The offence would come within the purview of culpable homicide amounting to murder as envisaged under Section 300 IPC. (Paras 26, 34 and 38)

Therefore, it is not a fit case where a different opinion from that of the trial court as also the High Court can be arrived at. Both the courts, had rightly convicted the appellant herein for commission of an offence under Section 302 IPC. (Para 39). *Subhash Shamrao Pachunde* v. *State of Maharashtra*, (2006) 1 SCC 384: (2006) 1 SCC (Cri) 388: AIR 2006 SC 699: 2006 Cri LJ 546.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 8-12-2005]

Khanjan Pal v. State of U.P., (1990) 4 SCC 53: 1991 SCC (Cri) 44; Bhojappa Hanamanthappa Choudannavar v. State of Karnataka, (2004) 10 SCC 177: 2004 SCC (Cri) 1783, distinguished

[589] — S. 300 Exception 4 — "Fight" — *Held, is a combat between two and more persons with or without weapons — Further held, it is a question of fact, and whether a quarrel is sudden or not must necessarily depend upon the proven facts of each case — Words and Phrases — "Fight"* (Para 13). *Pappu* v. *State of M.P.*, (2006) 7 SCC 391: (2006) 3 SCC (Cri) 283: AIR 2006 SC 2659.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 11-7-2006]

[590] — S. 300 Exception 4 — "Sudden Fight" — *Held, for bringing within S. 300 exception 4's operation it has to be established that the act was committed without premeditation, in a sudden fight, in the heat of passion, upon a sudden quarrel, without the offender having taken undue advantage and not having acted in a cruel or unusual manner — Further held, "undue advantage" as used in the provision means "unfair advantage"* (Paras 12 and 13). *Pappu* v. *State of M.P.*, (2006) 7 SCC 391: (2006) 3 SCC (Cri) 283: AIR 2006 SC 2659.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 11-7-2006]

[591] — S. 300 Exception 4 — Applicability — Requisites for — *Reiterated*

Exception 4 to Section 300 can be invoked if death is caused (*a*) without premeditation; (*b*) in a sudden fight; (*c*) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (*d*) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. The expression "undue advantage" as used in the provision means "unfair advantage". (Paras 10 and 11). *Lachman Singh* v. *State of Haryana*, (2006) 10 SCC 524: (2007) 1 SCC (Cri) 123: AIR 2006 SC 2763: 2006 Cri LJ 4041.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 28-7-2006]

[592] — S. 300 Exception 4 — Expression "undue advantage" as used in — Meaning of — *Held, means "unfair advantage" — Words and phrases — "Undue advantage"* (Para 9). *Sandhya Jadhav* v. *State of Maharashtra*, (2006) 4 SCC 653: (2006) 2 SCC (Cri) 394: (2006) 2 KLT 413: 2006 Cri LJ 2111.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 31-3-2006]

[593] — Ss. 300 Exception 4, 302 & 304 Pt. II — Conditions for applicability of S. 300 Exception 4, explained — *Held, covers acts done without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel with the deceased without the offender having taken undue advantage and not having acted in a cruel or unusual manner — All ingredients of Exception 4 must be satisfied — Accused tenants assaulting their landlord PW 2 when he went to them to demand house rent — Deceased (nephew of PW 2) intervening in the matter to separate them — Appellant giving a knife-blow on the back of the deceased and thus causing his death — On facts, held, Exception 4 to S. 300 had full application to the present case — Conviction altered from S. 302 IPC to S. 304 Pt. II*

IPC — Words and phrases — "Fight", heat of passion", "sudden quarrel"

For bringing in operation of Exception 4 to Section 300 IPC, it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner. (Para 8)

Thus, the help of Exception 4 can be invoked if death is caused (*a*) without premeditation; (*b*) in a sudden fight; (*c*) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (*d*) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. (Para 9)

It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two or more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. (Para 9)

In the present case, the inevitable conclusion is that Exception 4 to Section 300 IPC has full application. (Para 12). *Sandhya Jadhav* v. *State of Maharashtra*, (2006) 4 SCC 653: (2006) 2 SCC (Cri) 394: (2006) 2 KLT 413: 2006 Cri LJ 2111.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 31-3-2006]

[594] — S. 301 — Applicability — *Causing death of a person other than person whose death was intended — If killing took place in the course of doing an act which a person intends or knows to be likely to cause death, it ought to be treated as if the real intention of the killer had been actually carried out — Where accused persons were firing from their rifles with the intention to kill one* **H** *and others but in the course a girl who was passing through that way also sustained injuries as a result of which she died, held, S. 301 attracted — Fact that there was no intention to cause injury to the girl and she was accidentally hit can make no difference as according to prosecution accused intended to cause injuries by firearm to* **H** *and in attempting to carry out the same, also caused injuries to her* (Paras 5 and 6). *Rajbir Singh* v. *State of U.P.*, (2006) 4 SCC 51: (2006) 2 SCC (Cri) 209: AIR 2006 SC 1963: 2006 Cri LJ 2458.

Bench Strength **2**. Coram: *Arun Kumar* and **G.P. Mathur**, JJ. [Date of decision: 8-3-2006]

SECTION 302 — MURDER TRIAL

See also CRIMINAL TRIAL

Synopsis

(a) Generally — Nature and Scope
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(g) Common intention
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(i) Conviction altered
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  (1) Death Sentence
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(s) Section 302 or Section 304

(a) Generally — Nature and Scope

[595] — S. 302 — Applicability of — Single blow — Plea of — *Held, though there can be no rule of universal application that whenever death occurs on account of a single blow, S. 302 IPC is ruled out, the fact situation has to be considered in each case* (Para 11). *Sandhya Jadhav* v. *State of Maharashtra*, (2006) 4 SCC 653: (2006) 2 SCC (Cri) 394: (2006) 2 KLT 413: 2006 Cri LJ 2111.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 31-3-2006]

[596] — S. 302 — Held, it cannot be laid down as a rule of universal application that whenever one blow is given, S. 302 is ruled out — *It would depend upon the weapon used, the size of it in some cases, force with which the blow was given, part of the body on which it was given, etc.* (Para 14). *Pappu* v. *State of M.P.*, (2006) 7 SCC 391: (2006) 3 SCC (Cri) 283: AIR 2006 SC 2659.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 11-7-2006]

(b) Acquittal confirmed

[597] — Ss. 302, 307 and 34 — Appreciation of evidence — Prosecution's failure to prove its case — *According to prosecution, pursuant to a quarrel ensued over ploughing of land alleged to be of deceased by Accused 1, appellant who was a friend of Accused 1, assaulted deceased with a hammer causing his death and other accused assaulted deceased's family members with bamboo sticks causing injuries — Whether the land belonged to deceased in dispute — Motive of appellant not established — Having regard to various inconsistencies, trial court acquitting the appellant — Held, High Court erred in reversing the judgment of acquittal — Criminal Procedure Code, 1973, Ss. 378 & 386. Samghaji Hariba Patil* v. *State of Karnataka*, (2006) 10 SCC 494: (2007) 1 SCC (Cri) 113.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 19-10-2006]

— **Ss. 302/34** *See* CRIMINAL TRIAL — 'Witnesses' — Solitary witness, (2006) 11 SCC 323

(c) Appreciation of evidence

See also CRIMINAL TRIAL — 'Circumstantial Evidence'

— **S. 302** *See* CRIMINAL TRIAL — 'Appreciation of evidence' — Contradictions, inconsistencies, exaggerations or embellishments, (2006) 11 SCC 444

[598] — S. 302 — Murder or suicide — Prosecution case of bride burning against appellant — *Defence case that deceased was suffering from mental illness and depression and was not on good terms with appellant husband on the belief of his having an affair with another woman and that she committed suicide by locking the doors of the room and pouring kerosene and setting herself on fire — Appellant was neither arrested after the incident even though his name was mentioned in FIR as accused nor did he evade arrest — In fact, appellant had taken part along with others in dousing the flames — He also took deceased to hospital — Though in dying declaration deceased had accused the appellant of having set her on fire, but in view of her mental condition and nature of relationship with appellant, held, there was possibility of her making a false statement — Having regard to conduct of appellant and other evidence, held, prosecution failed to prove guilt of appellant beyond reasonable doubt — Crimes against women and children — Bride burning*

The deceased was the wife of the appellant. They were not on good terms. The deceased nurtured grudge against him on the belief that the appellant was having an affair with another woman. On 4-10-1998 at about 10.45 a.m. some children were watching television in the house of the appellant. They came out therefrom stating that the deceased had asked them to go out of the house and bolted the door from inside. Upon hearing the same, and on seeing smoke coming out of the room, PWs and the appellant went back and broke open the door. The room had two doors and both were found to have been locked from inside. The PWs saw the deceased in flames. The appellant along with others extinguished the fire and took the deceased to hospital where her dying declaration was recorded by a Judicial Magistrate. Later, a Head Constable also recorded her statement on the basis of which FIR was lodged naming the appellant as the accused. The deceased died in the hospital on 9-10-1998. The appellant was arrested on 21-10-1998. The investigating officer admittedly stated that at the place of occurrence neither a gas stove nor a kerosene stove nor firewood was found. He seized the bolt from inside the house in a molten condition. The appellant was put on trial. Defence case before the trial court was that the deceased committed suicide as after undergoing a hysterectomy operation she suffered hormonal imbalance leading to mental stress and strain. She was said to have been not only suffering from mental illness and unsoundness of mind but also from depression. The son and daughter of the deceased categorically stated that the deceased had been suffering from mental illness and had made attempts to commit suicide by pouring kerosene and setting fire to her person on an earlier occasion but the same was prevented. The trial court convicted the appellant under Section 302 IPC and sentenced him to life imprisonment relying upon the dying declaration made by the deceased. The High Court in appeal upheld the conviction and sentence taking the view that the dying declaration was reliable.

Allowing the appeal,

Held :

It is not possible to accept the view that the burden of proof lies upon the appellant in terms of Section 106 of the Evidence Act, as also in view of the fact that the appellant did not suffer any burn injury. In a criminal case, it is for the prosecution to prove the involvement of an accused beyond all reasonable doubt. It was not a case where both, husband and wife, were last seen together inside a room. The incident might have taken place in a room but the prosecution itself has brought out evidences to the effect that the children who had been watching television were asked to go out by the deceased and then she bolted the room from inside. As they saw smoke coming out from the room, they rushed towards the same and broke open the door. Section 106 of the Evidence Act, cannot be said to have any application whatsoever. (Paras 9 and 10)

(c) Appreciation of evidence *(contd.)*

The absence of injury on the person of the appellant cannot be a ground for believing the prosecution case. All the prosecution witnesses categorically stated that the fire was doused by pouring water. In that situation, no wonder, the appellant did not suffer any burn injury. It is not the case of the prosecution that in fact any other person had suffered any burn injury in the process of putting out the fire. (Para 12)

There was no material to show that the appellant was absconding or he could not be arrested despite attempts having been made therefor. Why despite the fact, the appellant who had been shown to be an accused in the first information report recorded by himself was not arrested is a matter which was required to be explained by the investigating officer. He admittedly visited the place of occurrence and seized certain material objects. The investigating officer did not say that he made any attempt to arrest the appellant or for that matter he had been evading the same. He also failed and/or neglected to make any statement or bring on record any material to show as to what attempts had been made by him to arrest the appellant. No evidence furthermore has been brought by the prosecution to show as to since when the appellant made himself unavailable for arrest and/or was absconding. (Para 11)

The son and daughter of the deceased categorically stated that she had been suffering from depression and she had made an attempt to commit suicide a week prior to the date of occurrence. It is the positive case of the prosecution itself that she was not keeping good relations with the appellant on the belief that he had an affair with another lady. The same admittedly has not been proved. If she had been labouring under a false belief and if in fact she had been suffering from depression for whatever reasons, the possibility of her making wrong statement before the Magistrate cannot be ruled out. In any event, the materials brought on records do not support the prosecution case, but support the defence. Not only the appellant remained with the PWs after the incident but also he took part in dousing the flames. Indisputably, he took the deceased to the hospital. If the version of the deceased in her dying declaration is accepted as correct, the witnesses and in particular the neighbours would have lodged a first information report and in any event, would not have permitted the appellant to take her to the hospital. (Paras 13 and 12)

Conviction can be recorded on the basis of the dying declaration alone but therefor the same must be wholly reliable. In a case where suspicion can be raised as regards the correctness of the dying declaration, the court before convicting an accused on the basis thereof would look for some corroborative evidence. Suspicion is no substitute for proof. If evidence brought on records suggests that such dying declaration does not reveal the entire truth, it may be considered only as a piece of evidence in which event conviction may not be rested only on the basis thereof. The question as to whether a dying declaration is of impeccable character would depend upon several factors; physical and mental condition of the deceased is one of them. In this case the circumstances which have been brought on records clearly point out that what might have been stated in the dying declaration may not be correct. If the deceased had been nurturing a grudge against her husband for a long time, she while committing suicide herself may try to implicate him so as to make his life miserable. In the present case where the appellant has been charged under Section 302 of the Penal Code, the presumption in terms of Section 113-A of the Evidence Act is not available. In the absence of such a presumption, the conviction and sentence of the accused must be based on cogent and reliable evidence brought on record by the prosecution. In this case, the evidences are not such which point out only to the guilt of the accused. (Para 14). *P. Mani* v. *State of T.N.*, (2006) 3 SCC 161: (2006) 2 SCC (Cri) 36: AIR 2006 SC 1319: 2006 Cri LJ 1629.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 24-2-2006]

[599] — Ss. 302/149 — Land dispute — Sustainability of conviction — *Accused-appellants, except* ***M*** *and* ***K****, came armed with guns and country-made pistols and after some exchange of words with the prosecution party, started firing causing death of two members of the prosecution party —* ***M*** *and* ***K*** *not shown to have done any overt act — One of the eyewitnesses deposed that* ***M*** *and* ***K*** *had started abusing and said that members of the prosecution party shall not be left and be killed — Another eyewitness stated that* ***M*** *and* ***K*** *had shouted "not to leave them and kill them" — Held, evidence of these two witnesses by itself would not prove the real complicity of* ***M*** *and* ***K****, who were unarmed — There was no convincing evidence to prove that these two accused-appellants also shared the common object of the unlawful assembly — As regards the other appellants, there being evidence beyond reasonable doubt that they formed themselves into an unlawful assembly, held, they were rightly convicted under Ss. 302/149 IPC and S. 27 of Arms Act —* ***M*** *and* ***K*** *acquitted of all the charges framed against them and their bail bonds discharged — Arms Act, 1959, S. 27* (Paras 4, 5 and 6). *Mangal Singh* v. *State of Bihar*, (2005) 13 SCC 205: (2006) 2 SCC (Cri) 148: AIR 2005 SC 3269: 2005 Cri LJ 3755.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.P. Singh*, JJ. [Date of decision: 2-9-2005]

(d) Bail

— **S. 302** *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 437 & 439, (2006) 9 SCC 785

— **S. 302 r/w S. 201** *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 439 & 437, (2006) 9 SCC 425

(e) Benefit of doubt

See also CRIMINAL TRIAL

[600] — Ss. 302/149 — Fastening of liability — Fifteen persons named in the FIR but 39 persons put on trial — *Trial court convicting six accused while granting benefit of doubt to rest since testimonies of PWs in relation to overt acts attributed to some accused not corroborated by medical evidence — Accused 2 and 6 also acquitted by High Court following the same logic — Held, Appellants 3 and 4 also entitled to benefit of doubt as no overt act was attributed to them — However, conviction and sentence passed against Appellants 1 and 2 maintained since they were not only named in the FIR but also the role played by them in causing death was corroborated by medical evidence — Further held, in such cases where a large number of people allegedly took part in commission of offence, possibility of some bystanders being falsely implicated cannot be ruled out* (Paras 15, 17, 18, 20 and 21). *Sabbi Mallesu* v. *State of A.P.*, (2006) 10 SCC 543: (2007) 1 SCC (Cri) 142: AIR 2006 SC 2747: 2006 Cri LJ 4038.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 12-7-2006]

(f) Circumstantial evidence

See also Dowry Death

See also CRIMINAL TRIAL — 'Circumstantial Evidence'

[601] — S. 302 — Accused tried for murdering his wife — *Courts below concurrently holding that the guilt of the accused was proved beyond doubt by the following chain of circumstantial evidence: (i) Deceased last seen in the company of accused, which was admitted by the accused in his complaint and to his brother; (ii) the accused lodging a false complaint stating that the thieves who had attacked him and his wife had taken away the ornaments, when he himself had pledged those ornaments; and (iii) though he stated that he was beaten by the attackers, no injuries were found on his body — Held, there is no infirmity in the impugned order*

A complaint was lodged by the accused on 25-6-1996, stating that, while he was returning to the village along with his wife, four persons accosted them and attacked them. He managed to escape and inform his elder brother and other villagers. When all of them returned to the spot they found his wife unconscious and her ornaments (that is, half a tola of gold gundlu, half a tola of gold ear studs and 35 tolas of silver anklets) were missing. The wife was declared dead when taken to a doctor. (Para 2)

However, on 30-6-1996, the parents of the deceased approached the investigating officer and expressed a suspicion about the accused. The IO found that the accused had absconded after the incident. He was apprehended whereafter he gave a voluntary confessional statement (Ext. P-4) in the presence of panch witnesses. It came to light that the accused had pledged the said ornaments with PW 4 on various dates. Pursuant thereto the ornaments as well as the pawn receipt books were seized. The accused also took the IO and the panch witnesses to his house and produced the pledge receipts. (Para 3)

On completion of the investigation, the accused was charged with the offence of murdering his wife under Section 302 and causing disappearance of evidence under Section 201 IPC. The trial court and the High Court found the accused guilty. Hence the present appeal. (Para 4)

The accused made following submissions:

(*i*) That the ornaments were not taken by him because PW 1 (deceased's father) had stated that he found the mangalasutram, mettelu and nose stud on his daughter's body.

(*ii*) Discrepancy in evidence of PWs 1 and 2 (father and mother of the deceased) as to who gave which ornaments;

(*iii*) PW 3 (brother of the accused) stating that when he went to the scene of occurrence and enquired of the deceased (as to what happened), she told him that four persons came and beat her and thereafter she collapsed. This clearly established that the accused and the deceased were waylaid and attacked by four unknown persons.

(*iv*) Seizure of the ornaments was not established.

Dismissing the appeal

Held :

Submission 1:

This contention runs against the defence of the accused and the specific statement of the accused in the complaint dated 25-6-1996 that the thieves had stolen the three ornaments (half tola gold gundlu, half tola ear studs and 35 tolas of silver anklets). If they were still on the body of the deceased, they could not have been stolen. (Para 13)

Submission 2:

Who gave the ornaments to the deceased is not material. What is relevant is what was alleged to be stolen, but was found to have been pledged. (Para 14)

Submission 3:

PW 3 is the elder brother of the accused and is obviously interested in saving him. PW 3 was treated

(f) Circumstantial evidence *(contd.)*

as hostile and cross-examined and it was suggested that he had tried to improve upon his statement given to the police wherein he had stated that the deceased was unconscious when he went to the site of occurrence. Besides statement of PW 3 that he went on a scooter earlier and found the deceased in a conscious condition, is contrary to the statement of the accused in his complaint that his brother and villagers followed him, which shows that he, his brother and villagers reached the scene of occurrence together. (Para 15)

Submission 4:

Evidence of PW 4 clearly establishes that the ornaments were pledged with him from where they were seized. The discrepancy as to whether the gold gundlu was seized from his shop or whether he brought it and gave it to the police station on the next day not relevant. (Para 16). *Golusula Ellaiah* v. *State of A.P.*, (2006) 11 SCC 175: (2007) 1 SCC (Cri) 605.

Bench Strength **2**. Coram: *G.P. Mathur* and **R.V. Raveendran**, JJ. [Date of decision: 20-7-2006]

[602] — **S. 302 — Conviction based on circumstantial evidence — Sustainability** — *Deceased attacked with khukri dying as a result of several incised wounds sustained by him — Medical officer opined that the injuries could be caused by a khukri — Oral dying declaration made by deceased to his companion that accused-appellant had "cut him" found reliable — Evidence regarding the place where appellant had thrown away the khukri and recovery of the khukri therefrom throwing light on conduct of accused under S. 8 of Evidence Act — Having regard to the incriminating circumstances, held, prosecution case proved beyond reasonable doubt — Conviction of appellant under S. 302 and sentence of life imprisonment upheld. Ghanashyam Das* v. *State of Assam*, (2005) 13 SCC 387: (2006) 2 SCC (Cri) 331.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *D.M. Dharmadhikari*, JJ. [Date of decision: 27-7-2005]

[603] — **S. 302 — Last seen together — Circumstance that accused was last seen together with deceased, held on facts, not reliable as PW was of very weak eyesight and her claim that she being of the same village could have identified the accused from his speech not substantiated as no other witness stated that accused had spoken when he was allegedly seen near the deceased** — *Circumstance of recovery of incriminating materials also belied by High Court's finding that it was improbable that accused, who was allegedly absconding, would carry the incriminating materials and go near the police and present himself so that he could be arrested with the incriminating materials — Circumstance of recovery of bloodstained articles also rightly discarded by High Court as place of occurrence was easily accessible and seized articles were not established to be carrying human blood — Held, High Court justified in acquitting the accused-respondent*

The circumstances should be of such conclusive nature as to exclude every other possibility except the accused being guilty of the charged offence. In the present case, the circumstances were not conclusive in nature. The facts established are not consistent only with the hypothesis of guilt and inconsistent with the innocence of guilt and they have no moral certainty to exclude the possibility of guilt by any person other than the accused. This being the position, the High Court's well-reasoned judgment does not warrant interference. (Paras 5 to 7). *State of Rajasthan* v. *Khuma*, (2006) 11 SCC 64: (2007) 1 SCC (Cri) 374: AIR 2004 SC 4677: 2004 Cri LJ 4873.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 8-9-2004]

[604] — **S. 302 — Last seen together — Deceased last seen by his wife and son on 29-12-1998 at about 10 p.m. when he accompanied the appellant using his own motorcycle to meet A-1** — *Appellant not offering any explanation as to whether they had parted company thereafter — Appellant found present in A-1's residence at 3 a.m. on 30-12-1998 and he pointing out the place where the dead body was lying in the garden of A-1 — Motorcycle of the deceased also recovered from the same spot — Held, evidence adduced was conclusive of the fact that the appellant and the deceased travelled from the house of the deceased to the point where he was assaulted and killed — He may be acting at the behest of A-1 but even if that is not proved, the evidence as against the appellant was abundant and conclusive enough to prove that he was responsible for the death of the deceased — Mere fact that there was no direct evidence to show as to who actually assaulted the deceased was of no consequence — Conviction of appellant under S. 302 and sentence of life imprisonment passed against him justified* (Paras 12, 15 and 1). *Deepak Chandrakant Patil* v. *State of Maharashtra*, (2006) 10 SCC 151: (2006) 3 SCC (Cri) 491: AIR 2006 SC 1708.

Bench Strength **2**. Coram: **B.P. Singh** and *Altamas Kabir*, JJ. [Date of decision: 8-3-2006]

[605] — **Ss. 302 and 376 — Rape and murder of a minor girl aged 10 years — Circumstantial evidence — Last seen together** — *Deceased disappeared on Feb. 21 and her dead body was found in orchard of J next day — On the day of disappearance, accused-respondent was seen along with deceased at about 5 or 5.30 p.m. by a girl aged 12/13*

years and also by another witness who belonged to the same village and stated that he, the complainant (deceased's father) and the accused were of same brotherhood — A school teacher, a responsible, disinterested and independent witness, deposed to have seen accused and deceased at 7 p.m. going towards orchard of **J** *— Another PW stated he had last seen accused at 7.30 p.m. emerging from his field in a nervous state of mind and on being enquired he gave no reply and went towards his home — According to the deceased's father, when he went to the accused to enquire whereabouts of deceased, he saw scratch marks on his face but he could not give any explanation about the same — Doctor who conducted post-mortem next day at 3.30 p.m. opined that deceased was raped before murder and death was caused by strangulation which took place at about 6.30 or 7 p.m. on the previous day — Testimony of the witness found by trial court to be reliable and trustworthy and nothing could be elicited from their cross-examination to discredit the same — On a cumulative reading of the evidence of witnesses who had last seen the accused and deceased, together with medical evidence and non-explanation of accused of scratch marks on his face, held, prosecution consistently established the guilt of the accused and inconsistence with his innocence — High Court not justified in recording acquittal of accused*

In order to sustain a conviction on circumstantial evidence, the prosecution must establish that the chain of circumstances only consistently point to the guilt of the accused and is inconsistent with his innocence. (Para 16). *State of U.P.* v. *Desh Raj*, (2006) 9 SCC 278: (2006) 2 SCC (Cri) 489: AIR 2006 SC 1712: 2006 Cri LJ 2108.

Bench Strength **2**. Coram: **H.K. Sema** and *C.K. Thakker*, JJ. [Date of decision: 9-3-2006]

(g) Common intention

See also S. 34, above

[606] — Ss. 302/34 — Propriety of conviction under — *Prosecution case that one* **L** *and four other accused had surrounded the deceased and* **L** *struck a spade-blow on the head of the deceased from behind causing his death — Injuries found in post-mortem corresponded to the blow inflicted by* **L** *— Evidence of sole eyewitness corroborated by another material witness as well as by the doctor who conducted post-mortem examination — Held,* **L** *rightly found guilty of offence of murder — But there being no evidence to show that the other accused-appellants were carrying incriminating materials with them or they had prior meeting of minds or they participated in the assault on deceased, held, prosecution failed to prove that commission of the criminal act was done in furtherance of common intention and therefore, they would be entitled to benefit of doubt — Conviction of* **L** *converted to one under S. 302 simpliciter* (Paras 4, 5 and 6). *Bechara Kora Modi* v. *State of W.B.*, (2005) 13 SCC 395: (2006) 2 SCC (Cri) 333: AIR 2006 SC 638.

Bench Strength **3**. Coram: **H.K. Sema**, *G.P. Mathur* and *Altamas Kabir*, JJ. [Date of decision: 20-9-2005]

(h) Common object

See also S. 149, above

[607] — S. 302 r/w S. 149 — Common object — Infliction of fatal injury — Need for — *Common object may be of inflicting injuries to deceased and his companions, but if members of unlawful assembly knew that the offence of murder was likely to be committed in prosecution of the common object, and if death had been caused in prosecution of the common object, held, then every member of the unlawful assembly would be liable for offence of murder and it would not be necessary to record a finding as to who among the members of the assembly caused the fatal injury — Relevant factors for determining whether members had knowledge of likelihood of commission of murder indicated — Entire incident must be taken into consideration — Where infliction of grievous injuries to PWs by some members of the unlawful assembly viz. appellants and commission of murder of deceased by some other members of the assembly formed part of the same transaction, held on facts, appellants rightly convicted under S. 302 r/w S. 149 along with other accused members of the assembly who inflicted fatal injuries to deceased*

While PWs 1 and 2 were returning to their houses at about 12.15 in the midnight, the accused persons (A-1 to A-5) accosted them with deadly weapons. A-1, who bore a grudge against the deceased, the father of the said PWs, shouted at PW 2 saying that his entire family should be done away with and then A-2 stabbed PW 2 on his abdomen as a result of which his intestines came out. PW 1 ran to his house and informed his parents about the occurrence whereupon they rushed to the scene of occurrence. A-3 allegedly, stabbed the deceased on his shoulder and right thigh. When he turned round and tried to go into the house by climbing the stairs, A-1 prevented him from doing so and hit him with a knife on his head. On hearing the cries, PW 3 the deceased's brother, came out of his house along with his wife, PW 10. They saw the incident. When they came to the scene of occurrence, A-4 attacked him with a knife on his hand, as a result whereof PW 3 suffered an injury on the back side of his right hand, as also in the fingers. Seeing the said assault, PW 10 shouted, whereupon A-5 cut the ring fingers of both her left and right hands. PWs 7 and 8 and other persons having arrived at the scene by that

(h) Common object *(contd.)*

time, the accused persons fled away. The deceased and the injured persons were taken to hospital where the deceased died. In the accident registers of the hospital it was recorded that right middle finger of PW 3 was cut-off and cut injury over back of chest was about 2" x 1½" and that PW 10 had "cut injury" on left and right ring fingers. The trial court convicted the accused persons under Section 302 r/w Section 149 IPC and sentenced them to life imprisonment. A-2 was also convicted under Section 307 IPC and sentenced to undergo ten years' rigorous imprisonment. A-3 was convicted for an offence under Section 302 IPC and sentenced to undergo life imprisonment. A-4 was also convicted under Section 326 IPC and sentenced to undergo rigorous imprisonment for seven years. Accused 5 was also convicted under Section 324 IPC and sentenced to undergo three years' rigorous imprisonment. All the sentences were, however, directed to run concurrently. In appeal, the High Court modified the conviction of A-1 and A-2 to that under Section 302 r/w Section 34 instead of under Sections 302/149 IPC. The High Court confirmed the judgment of conviction and sentence imposed by the trial court in respect of other offences on Accused 3, 4 and 5 under Sections 302, 326, 324 and 302 read with Section 149 IPC respectively. Accused 1, 2 and 3 preferred an SLP before the Supreme Court but the same was dismissed. In the present appeal it was inter alia contended on behalf of the appellants A-4 and A-5 that the appellants had not participated in the assault on the deceased or his family members, and further having regard to the fact that they are not related to Accused 1 and 2, with whom the deceased and his family members were stated to be on inimical terms, they cannot be held guilty of the offence punishable under Sections 302/149 IPC. It was further pointed out that although a finger of PW 3 was said to have been severed, the same was not recovered by the investigating officer. As regards the injuries suffered by PW 10 it was argued that the doctor of the hospital had not disclosed dimension of the injuries, nor had he stated whether the injury was a deep incised wound or not. The primary question was whether the appellants can be said to have formed a common object with Accused 1, 2 and 3 to commit the alleged offences or not.

Dismissing the appeals,

Held :

Section 149 of the Penal Code provides for vicarious liability. If an offence is committed by any member of an unlawful assembly in prosecution of a common object thereof or such as the members of that assembly knew that the offence to be likely to be committed in prosecution of that object, every person who at the time of committing that offence was member would be guilty of the offence committed. The common object may be commission of one offence while there may be likelihood of commission of yet another offence, the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. Whether a member of such unlawful assembly was aware as regards likelihood of commission of another offence or not would depend upon the facts and circumstances of each case. Background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime would be relevant factors for drawing an inference in that behalf. (Para 36)

It is also well settled that if death had been caused in prosecution of the common object of an unlawful assembly, it would not be necessary to record a definite or specific finding as to which particular accused out of the members of the unlawful assembly caused the fatal injury. (Para 37)

For the purpose of invoking Section 149 of the Penal Code, the entire incident must be taken into consideration. The occurrence which resulted in death of one person and suffering of grievous injuries by some of the prosecution witnesses was part of the same transaction in this case. (Para 29)

The appellants came with the other accused persons with deadly weapons at midnight. The active role played by both the appellants herein, clearly stands proved by the evidence of the prosecution witnesses. Not only at the dead of night PW 1 and other witnesses were attacked, Accused 1 and 2 also went inside the house of the deceased and prevented the deceased from escaping from further assault. Whoever had come to the scene of occurrence and tried to intervene, had suffered injuries at the hands of one or the other accused persons. PW 3 and PW 10, it is true, were related to the deceased, but, they were also related to Accused 1 and 2, as admittedly, both the families are related to each other. It is not the case of the appellants or for that matter Accused 1 and 2 that PW 3 and PW 10 were inimical to them. There is nothing on record to show that they bore any grudge towards them. It is in the aforementioned fact situation, the role played by the appellants herein must be considered. They did not make any attempt to stop Appellants 1 and 2 from continuing assault on the family members of PW 2. They had not only watched as to how PW 2 son of the deceased, the deceased himself, PW 4 wife of the deceased and the two daughters i.e. PWs 5 and 6 suffered injuries after injuries at the hands of Accused 1 and 3, but even when PW 3 came to intervene, a griev-

ous injury was caused by appellant A-4 and when thereafter PW 10, a lady intervened, she also had sustained injuries on her hands. It is immaterial, in the aforementioned fact situation obtaining herein that PW 10 suffered simple injury, in view of the fact that whoever had come to interfere had been dealt with one way or the other by the accused persons. (Paras 30 to 33)

As regards the injury suffered by PW 10, the doctor referred to the accident register. He found that the ring fingers of both her hands were injured. He might have mistakenly stated that the same appeared to him, at that time, to be a simple injury with abrasion, but the fact remains that she was also sent to the duty doctor/emergency for treatment, which indicates that the contents of the injury report were correct. It may be that the duty doctor had not been examined, but the same is not very material for the purpose of the present case. As regards the nature of injuries suffered by PW 10, she had not been cross-examined. From the accident registers of the hospital it was clearly established that the said witnesses suffered injuries. There was no material contradiction between the ocular evidence and medical evidence. The genuineness or otherwise of the said accident registers is not in question. Correctness of the entries made therein is not in issue. Even no suggestion has been given to the doctor that the entries made in the said accident registers were not correct. Only because the investigating officer was negligent and did not make any attempt to recover the cut fingers of PW 3, the same by itself would not be sufficient to discard the consistent evidences of all the eyewitnesses. It is therefore, not possible to accept the contention that the medical evidence is contrary to the ocular evidence and Section 149 is not attracted. (Paras 23 to 28 and 34). *Munivel* v. *State of T.N.*, (2006) 9 SCC 394: (2006) 2 SCC (Cri) 581: AIR 2006 SC 1761: 2006 Cri LJ 2133: (2006) 2 KLT 682.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-4-2006]

[608] — S. 302 r/w S. 149, S. 300, clause thirdly and S. 326 r/w S. 149 — Conviction under — Propriety — *Common object to cause murder or to cause grievous injury — Alleged motive that deceased declined to persuade his younger brother (informant) from giving evidence against A-1 and A-5 in one case — Deceased not himself a witness in that case — A-2, A-3 and A-5 did not cause any injury to deceased but assaulted others — A-4 did not wield farsa with any intention or object to cause injury to deceased — Deceased died on account of stab wound inflicted by A-1 — Held, it could be reasonably inferred that A-1 intended to cause bodily injury to deceased by aiming blow on his chest — Said injury found to be sufficient in the ordinary course of nature to cause death — A-1's case fully covered by clause thirdly of S. 300 IPC — Hence, he liable to be convicted under S. 302 IPC — But, considering the facts, further held, it could not be said that the common object of the unlawful assembly was to commit the murder of the deceased or that the members of the unlawful assembly knew that murder was likely to be committed in prosecution of the common object of the assembly — Hence, remaining accused not liable to be convicted under S. 302 r/w S. 149 IPC — However, as the said members carried deadly weapons, knowledge that grievous injury may be caused can certainly be attributed to them — Hence, convicted under S. 326 r/w S. 149 IPC* (Paras 19, 20, 23, 7 and 24). *Radha Mohan Singh* v. *State of U.P.*, (2006) 2 SCC 450: (2006) 1 SCC (Cri) 661: AIR 2006 SC 951: (2006) 2 All LJ 242: 2006 Cri LJ 1121.

Bench Strength **3**. Coram: *K.G. Balakrishnan, Arun Kumar* and **G.P. Mathur**, JJ. [Date of decision: 20-1-2006]

[609] — Ss. 302/149 — Common object — Absence of — Homicidal death — Circumstantial evidence — *Quarrel took place between deceased and accused-appellants — Accused **B** assaulted deceased at the instance of another accused but deceased after freeing himself from the grip of the appellants ran away from the scene — Appellants and others chased him — PWs and others in the meantime bolted themselves inside a shop and came out about half-an-hour thereafter and found the area deserted — Dead body of the deceased was found near a canal next morning — Circumstances relied upon by prosecution were that some of the appellants along with others had chased the deceased and that appellants had prepared and forced the PWs to sign a sulahnama wherein a statement was made that they would not file any complaint against the accused — Appellants were unarmed — Role played by them in causing death of deceased not known — Who assaulted deceased not known — Presence of appellants when last blow was inflicted also not known — No recovery made from them — Held on facts, prosecution failed to prove that appellants were members of unlawful assembly and that they had a common object of killing the deceased — Hence they cannot be convicted under Ss. 302/149*

In this case the appellants except *B* were not parties to the dispute which took place in three stages. At the third stage of the quarrel they wanted to teach the deceased and others a lesson. For picking up quarrel with *B* they might have become agitated and asked for apologies from the deceased. It was so done at the instance of another accused *N*, but thereafter the deceased was assaulted by *B* at the instance of one *R*. The deceased, however, while being assaulted freed

(h) Common object *(contd.)*

himself from the grip of the appellants and fled from the scene. The deceased was being chased not only by the appellants herein but by many others. He was found dead the next morning.

Held :

Homicidal death of the deceased is undisputed. However, there is no evidence as to who had assaulted him. Role played by the accused either conjointly or individually in causing death of the deceased is not known. Some offence was committed, but who did so is not known. It is also not known as to whether if one or all of the appellants were present, when the last blow was given. It cannot be said that they had common object of intentional killing of the deceased. Neither Section 34 nor Section 149 of the Penal Code is, therefore, attracted. As it had not been established that the appellants were members of an unlawful assembly, they could not have been convicted for commission of an offence under Sections 302/149 IPC. They are entitled to benefit of doubt. (Paras 13, 15 and 16). *Munna Chanda* v. *State of Assam*, (2006) 3 SCC 752: (2006) 2 SCC (Cri) 43: 2006 Cri LJ 1632.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 24-2-2006]

[610] — Ss. 302/149 — Submission that accused-appellants had not caused any injury to deceased and therefore they could not have been convicted under S. 302/S. 149 for causing homicidal death — *Accused-appellants armed with deadly weapons reaching the spot of incident together — Immediately thereafter one of the accused (released by State considering his age) with his .12 bore double-barrel gun firing at the deceased which was followed by firing by another accused (since dead) — In the same transaction accused-appellants causing several injuries not only to the persons present at the spot but also to others who had reached there after hearing the commotion — Held, on such facts, common object of the assembly was clearly established — Knowledge that grievous hurt or death would be caused could be safely attributed to the members of the unlawful assembly since two of its members had carried licensed guns — An inference could be drawn of the knowledge of common object and formation of common object from the behaviour of the members of the unlawful assembly, who came together with deadly weapons and immediately started attacks indiscriminately on the persons present there — Further held, nine persons had received 31 injuries which clearly established the common object of the unlawful assembly to do away with the deceased and cause injuries to any person who tried to intervene — Accused-appellants rightly convicted under Section 302 IPC with the aid of Section 149 IPC apart from other convictions under other sections of IPC for causing injuries to other persons* (Paras 26 and 27). *Mohinder Singh* v. *State of Punjab*, (2006) 10 SCC 418: (2006) 3 SCC (Cri) 578: AIR 2006 SC 1639.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.P. Naolekar**, JJ. [Date of decision: 24-3-2006]

(i) Conviction altered

[611] — S. 302, S. 304 Pt. I, S. 326 and S. 324 — Murder trial — Appellants alleged to have caused injuries to the deceased by cutting him with knife and pichuvas consequent to which he died — *Appellant 1 cutting the deceased on the left side of the head with a knife and also inflicting injury on his right ear and again on his head after he fell down i.e. fatal injuries attributed to Appellant 1 — Appellant 2 cutting the deceased on his back and right knee and also injuring PW 12 who intervened — Appellant 3 beating the deceased on his right hand causing grievous injury — Evidence of eyewitnesses found to be cogent, credible and trustworthy — High Court convicting Appellants 1 and 2 under S. 302 and appellant 3 under Ss. 302/34 — Considering the weapons used by the appellants and the place where injuries were inflicted, held, Appellant 1 liable to be convicted under S. 302, Appellant 2 under S. 304 Pt. I and S. 324 and Appellant 3 under S. 326* (Paras 4, 5, 9 and 15). *Settu* v. *State of T.N.*, (2006) 10 SCC 549: (2007) 1 SCC (Cri) 147: AIR 2006 SC 2986: 2006 Cri LJ 3889.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 22-8-2006]

(j) Conviction reversed

[612] — S. 302 — Murder trial — Contradiction between ocular and medical evidence — *PW 1 (an eyewitness and wife of the deceased) alleging that while Accused 2 and 3 held her and gagged her, Accused 1 picked up a big stone (weighing about 25 kg to 30 kg) and hit the deceased on his head, resulting in his death — Neither any depressed injury found on the deceased, nor any blood oozed out from his mouth or nose — Besides, there was profuse bleeding internally but no bleeding in the external injury — Where the medical evidence was at variance with the ocular evidence, held, the testimony of the eyewitness should be decided independently and if found trustworthy, the same could not be discarded merely because it is at variance with medical opinion — However, further held, if the ocular testimony is such that it is not possible to relate the injuries with the circumstances in which they were said to have been inflicted, the court has the discretion not to accept the ocular evidence — In the instant case, in the absence of any depressed injury and in the absence of any bleeding from the*

nose and ears of the deceased no credence can be given to the evidence of PW 1 — Moreover, Accused 1 suffered from polio in his right leg and was unable to travel without an escort and hence it was impossible for him to lift the heavy stone — Appellants entitled to benefit of doubt (Paras 17 to 21). *Khambam Raja Reddy* v. *Public Prosecutor, High Court of A.P.*, (2006) 11 SCC 239: (2007) 1 SCC (Cri) 431: AIR 2006 SC 3236: 2006 Cri LJ 4652.

Bench Strength **2**. Coram: *A.K. Mathur* and **Altamas Kabir**, JJ. [Date of decision: 21-9-2006]

(k) Conviction upheld

[613] — S. 302 — Appreciation of evidence — Murder of wife suspecting her fidelity — *Extra-judicial confession of accused recorded by village administrative officer — Fully corroborated by PWs as well as recovery of bloodstained clothes of accused and the crime weapon — Held, commission of murder by accused established — Evidence Act, 1872, S. 24*

The extra-judicial confession recorded by PW 1 has a ring of truth and the same is corroborated by the recovery of the bloodstained clothes and the baditha with which the accused had attacked the deceased to death. The testimony of PW 2 and PW 4 fully corroborates the extra-judicial confession recorded by PW 1, an administrative officer. Therefore, there is no manner of doubt that the accused was the assailant as he was annoyed with his deceased wife because of cohabitation with PW 2. (Para 7). *Namala Subba Rao* v. *State of A.P.*, (2006) 10 SCC 557: (2007) 1 SCC (Cri) 155.

Bench Strength **2**. Coram: *G.P. Mathur* and **A.K. Mathur**, JJ. [Date of decision: 17-10-2006]

[614] — Ss. 302/34 — Conviction if justified — *Conviction of accused-appellants under Ss. 302/34 and S. 27 of the Arms Act and sentence of life imprisonment and RI for three years respectively imposed by the Sessions Court, affirmed by the High Court — Sustainability — Appellants alleged to have fired a number of shots at the deceased after chasing him resulting in his death, while he was returning in a tractor-trolley along with his brother PW 12 and others after loading timber — Seven out of 15 PWs turning hostile and hence contention by appellants that conviction on the sole testimony of PW 12, who was an interested witness could not be sustained — PW 12 deposing about the entire incident and no infirmity of any kind pointed out in his testimony — Besides, PW 3 driver of the tractor-trolley except for mentioning the names of the appellants, corroborating the prosecution version of the incident — Substantial corroboration in testimonies of PWs was consistent with medical evidence on record — Motive for commission of crime viz. refusal by deceased to pay "**rangdari** tax" (goonda tax) to the appellants, established — Held, this explains the reason as to why as many as seven witnesses had turned hostile and PW 3 had not mentioned the names of the appellants in his deposition before the Court — Hence, on facts held, conviction was justified* (Paras 2, 5, 6, and 10). *Ramashray Yadav* v. *State of Bihar*, (2005) 13 SCC 468: (2006) 2 SCC (Cri) 267: AIR 2006 SC 201: 2006 Cri LJ 133.

Bench Strength **2**. Coram: *H.K. Sema* and **G.P. Mathur**, JJ. [Date of decision: 8-11-2005]

[615] — Ss. 302/34 and 304 Pt. II — Murder — Conviction — *Appellant and two other accused **MS** and **MM** convicted by trial court under S. 304 Pt. II — During pendency of appeal before High Court, accused **MM** died and his appeal abated — Appeal preferred by **MS** allowed and he was acquitted by High Court — But appellant's appeal dismissed by High Court and his conviction under S. 304 Pt. II altered to that under Ss. 302/34 and he sentenced to life imprisonment — Post-mortem report showing that deceased received several injuries on vital parts of the body and head injury inflicted by **MM** was fatal and sufficient in the ordinary course of nature to cause death — Held, High Court justified in altering the conviction of appellant from S. 304 Pt. II to Ss. 302/34* (Paras 2 and 3). *Babasaheb Murlidhar* v. *State of Maharashtra*, (2006) 10 SCC 309: (2006) 3 SCC (Cri) 544.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 6-12-2005]

[616] — Ss. 302/201 — Appreciation of evidence — Murder — Sole eyewitness, who was a natural witness, clearly deposed about the incident in detail — His testimony found to be believable — *Prosecution version corroborated by evidence of incharge of the police station who had inspected the spot as well as post-mortem report — Held, in view of clear evidence of the eyewitness, conviction of the accused, as recorded by courts below, must be upheld, even assuming that evidence of the other witness was not acceptable* (Para 11). *Major Singh* v. *State of Punjab*, (2006) 10 SCC 499: (2007) 1 SCC (Cri) 118.

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 19-10-2006]

(l) Dowry death

See also S. 304-B, below

[617] — S. 302 — Murder trial — Dowry death — Conversion of conviction from Ss. 304-B and 498-A to S. 302 — Sustainability — *Appellant-accused alleged to have caused death of the deceased within seven years of marriage by*

(m) Dying declaration

subjecting her to cruelty and harassment for more dowry — Demand for dowry and harassment meted out to the deceased proved — High Court while dismissing appeal converting conviction from Ss. 304-B and 498-A to S. 302 — Doctor stating that the death was the result of asphyxia due to throttling and that it was not a case of suicidal death but of homicidal death — His evidence remaining unimpeached — Testimonies of other PWs clearly establishing the involvement of the appellant-accused in the occurrence — Held, conviction of appellant under S. 302 was justified (Paras 7 to 13). *Panakanti Sampath Rao* v. *State of A.P.*, (2006) 9 SCC 658: (2006) 3 SCC (Cri) 355.

Bench Strength **2**. Coram: *Dr. Ar. Lakshmanan* and *Lokeshwar Singh Panta*, JJ. [Date of decision: 18-5-2006]

(m) Dying declaration

See also EVIDENCE ACT, 1872, S. 32

[618] — S. 302 and S. 498-A — Deceased in her dying declaration specifically stating that while her husband (Appellant 1) held her, her mother-in-law (Appellant 3) sprinkled kerosene on her and her father-in-law (Appellant 2) set her on fire — Three dying declarations consistent with each other — *Hence held, no weight can be attached to the fact that the clothes of accused had no sign of kerosene or that the deceased did not shout for help while trying to save herself — Deceased may not have had the opportunity of raising an alarm before she was set on fire, and it is not always necessary that kerosene must also fall on the clothes of the perpetrators of the crime* (Para 5). *Rajendra* v. *State of Maharashtra*, (2006) 10 SCC 759: (2007) 1 SCC (Cri) 158.

Bench Strength **2**. Coram: **B.P. Singh** and *Altamas Kabir*, JJ. [Date of decision: 27-7-2006]

(n) Intention

[619] — Ss. 302, 304 and 300 Exception 4 — Murder — Intention to cause death — Determination of — Duty of court — Relevant factors to be considered — Applicability of Exception 4 to S. 300 — *Held, court to decide pivotal question of intention with care and caution — It must ensure that cases under S. 302 are not converted to one under S. 304 Pt. I/II and vice versa — Circumstances from which intention to cause death can be gathered, stated — Said list of circumstances held to be not exhaustive — In present case, existence of previous enmity between deceased **D** and accused **C** — **D** followed by his father PW 2 and brother PW 1 going to **C**'s house to protest against him and his father who had attacked and caused injuries to PWs 1 and 2 about half an hour earlier — **C** causing death of **D** by giving a single blow with dagger on neck of **D** — Neither **D** nor PWs 1 and 2 armed with any weapon — No intention on their part to cause any physical harm to **C** or to retaliate for the earlier incident — No provocation, sudden quarrel or fight — Considering the nature and size of weapon used, the force with which it was used, the vital part of body on which it was used and the nature of injury caused, held, intention to cause death or at all events intention of causing bodily injury which is sufficient in the ordinary course of nature to cause death was made out — Circumstances to bring the case under Exception 4 to S. 300 not present — Hence, conviction under S. 302 upheld*

The court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters — plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. (Para 29)

The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (*i*) nature of the weapon used; (*ii*) whether the weapon was carried by the accused or was picked up from the spot; (*iii*) whether the blow is aimed at a vital part of the body; (*iv*) the amount of force employed in causing injury; (*v*) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (*vi*) whether the incident occurs by chance or whether there was any premeditation; (*vii*) whether there was any prior enmity or whether the deceased was a stranger; (*viii*) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (*ix*) whether it was in the heat of passion; (*x*) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (*xi*) whether the accused dealt a single blow or several blows. The above list of circumstances is not exhaustive and there may be several other special circumstances with refer-

ence to individual cases which may throw light on the question of intention. (Para 29)

In the present case, the appellant *C* was carrying a barisa, a dangerous weapon. There was previous enmity. There was an earlier incident, about half an hour earlier when the father and brother of the deceased *D* had been attacked by the appellant and his father. The deceased was unarmed. There was no provocation, sudden quarrel or fight. There was no indication that *D* and PWs 1 and 2 intended to cause any physical harm to the accused, or that they intended to retaliate for the earlier incident. The nature and size of the weapon used by the appellant (barisa, which is a big size dagger), the force with which the weapon was used, the part of the body where the injury was caused — just below the neck, a vital part of the body, the nature of the injury — stab wound measuring 3 cm x 5 cm x 12 cm, resulting in instantaneous collapse leading to death, leaves no room to doubt that the intention of the appellant was to cause the death or, at all events, cause bodily injury, which is sufficient in the ordinary course of nature to cause death. The circumstances to bring the case under Exception 4 to Section 300 do not exist. (Paras 30 and 18). *Pulicherla Nagaraju* v. *State of A.P.*, (2006) 11 SCC 444: (2007) 1 SCC (Cri) 500: AIR 2006 SC 3010: 2006 Cri LJ 3899.

Bench Strength **2**. Coram: *G.P. Mathur* and **R.V. Raveendran**, JJ. [Date of decision: 18-8-2006]

(o) Political murders

[620] — S. 302 r/w S. 149 — Political murders — Sustainability of conviction and sentence of life imprisonment — *Two political groups headed by different leaders with enmity and passion to assault members of rival group — Motive alleged was that leader of one group was murdered earlier on the same day by reason of which his followers unleashed reign of attacks on the rival group causing death of S and N in their respective residences — All the accused in both the instances known to the residents of the respective houses and hence any case of mistaken identity ruled out — Consistent and detailed version given by the PWs corroborating each other and found trustworthy — Medical evidence satisfactorily proving that the two deceased had sustained series of injuries resulting in their death — Motive for murder also spoken of by the witnesses and FIR dispatched without any delay — Held, conviction and sentence of life imprisonment passed by courts below call for no interference* (Paras 4, 5, 7, 8 and 12). *Gonchi Rajashekhar Reddy* v. *State of A.P.*, (2006) 9 SCC 535: (2006) 3 SCC (Cri) 332: 2006 Cri LJ 2378.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *Arun Kumar*, JJ. [Date of decision: 3-4-2006]

(p) Sentence

See also CRIMINAL TRIAL — 'Sentence'

(1) Death Sentence

[621] — Ss. 302/201 — Sentence — Severing of head and running away with the severed head of deceased — *Previous enmity existed due to suspicion about commission of murder of accused's sister by deceased which could have been a motive for the crime — In the circumstances, held, death sentence awarded by courts below should be reduced to life imprisonment* (Para 17). *Major Singh* v. *State of Punjab*, (2006) 10 SCC 499: (2007) 1 SCC (Cri) 118.

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 19-10-2006]

[622] — Ss. 302 and 307 — Sentence — Death sentence — Question relating to imposition of — Approach in taking decision on — *Held, a balance sheet of aggravating and mitigating circumstances has to be drawn up — Death sentence awarded to army personnel by court martial — High Court without drawing balance sheet of aggravating and mitigating circumstances remanding matter for fresh sentence by holding that death sentence was not proper as the instant case did not fall within the category of rarest of rare cases — Thus, High Court failed to do the exercise as held above — Hence, matter remitted to High Court for consideration afresh on question of sentence*

The accused army personnel, who was on guard duty on the date of the incident, did not permit PWs 8, 9 and one *P* to write the "lights out" reports as the said persons were in civvies and were not having their identity cards with them. The accused instructed the said persons to sit down on a bench till the arrival of CHM. After some time, when CHM arrived there he asked PWs 8, 9 and *P* to go ahead with the filling up of the register. He also enquired from the accused if he had consumed liquor. No sooner these words were uttered, the accused fired a shot at CHM who was standing at a distance of about four yards. On being hit by the bullet, CHM fell down. Thereafter, the accused fired three shots at PWs 8, 9 and *P* in quick succession. In the said incident, CHM and *P* died and PWs 8 and 9 received serious injuries.

On the basis of the report given general court martial proceedings commenced and the accused faced trial under the Army Act. There were four charges under Section 69 of the Army Act. The first two charges related to commission of civil offence, that is, murder contrary to Section 302 IPC and the other two related to civil offence i.e. attempt to murder, contrary to Section 307 IPC. Considering the materials on record the Deputy Judge Advocate General came to

(p) Sentence - Death Sentence *(contd.)*

hold that this was a case which clearly was covered by the category of rarest of rare cases and deserved death sentence. The Judge Advocate General confirmed the said findings, which were also affirmed by the Central Govt. Thereafter, a writ application was filed before the Allahabad High Court questioning the conviction and the sentence imposed. By the impugned judgment, the High Court held that the conviction was well merited, but felt that the case did not fall in the category of rarest of rare cases and therefore directed the authorities to pass a fresh order on the question of sentence. Hence, the present appeal.

Allowing the appeal, the Supreme Court decided as above.. *Union of India* v. *Devendra Nath Rai*, (2006) 2 SCC 243: (2006) 1 SCC (Cri) 487: 2006 Cri LJ 967: (2006) 1 All LJ 883.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Tarun Chatterjee*, JJ. [Date of decision: 10-1-2006]

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681; Devender Pal Singh v. State of NCT of Delhi, (2002) 5 SCC 234: 2002 SCC (Cri) 978, followed

[623] — Ss. 302, 364, 323 r/w 120-B — Sentence — Death sentence — When justified — *Chain of kidnapping of children and their murder committed by two sisters (appellants) and their mother (now dead) — Offences committed in systematic, casual and most dastardly manner — Showing their depravity of mind — They became a menace to the society — No chances of their reformation — No mitigating circumstance in their favour except that they are women — Death sentence imposed by trial court confirmed by High Court — Held, death sentence justified, hence confirmed*

The two appellants kidnapped several children and committed their murder in the most dastardly manner. In some cases, the body could not be found and in some cases the dead body could be traced out. The nature of the crime and the systematic way in which each child was kidnapped and killed amply demonstrates the depravity of the mind of the appellants. These appellants indulged in criminal activities for a very long period and continued them till they were caught by the police. They very cleverly executed their plans of kidnapping the children and the moment they were no longer useful, they killed them and threw the dead bodies at some deserted place. The appellants had been a menace to the society and the people in the locality were completely horrified and they could not send their children even to schools. The appellants had not been committing these crimes under any compulsion but they took it very casually and killed all these children, least bothering about their lives or agony of their parents. (Paras 34 and 35)

The appellants have been awarded capital punishment for committing these murders and their sentence was confirmed by the High Court. After carefully considering the whole aspect of the case and also keeping in mind the new trend in sentencing system in criminology, it cannot be held that the appellants are likely to be reformed. Therefore, the death penalty imposed on them is confirmed. The stay of execution of the capital punishment imposed on these appellants shall stand vacated and the authorities are directed to take such further steps as are necessary to carry out the execution of capital punishment imposed on these appellants. (Paras 35 and 36). *Renuka Bai* v. *State of Maharashtra*, (2006) 7 SCC 442: (2006) 3 SCC (Cri) 290: AIR 2006 SC 3056.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *G.P. Mathur*, JJ. [Date of decision: 31-8-2006]

(2) Fine

[624] — S. 302 — Sentence — For conviction under S. 302, appellant sentenced to life imprisonment and fine of Rs 50,000 imposed with default stipulation, by the trial court — *High Court in appeal, confirming the conviction and sentence — Neither the trial court nor the High Court recording any reason for awarding such exemplary fine — Hence, fine reduced to Rs 1000 with default stipulation* (Paras 3 and 4). *Omanakuttan* v. *State of Kerala*, (2006) 10 SCC 197: (2006) 3 SCC (Cri) 481.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 20-1-2006]

(q) Witnesses

See also CRIMINAL TRIAL — 'Witnesses'

[625] — S. 302 — Property dispute — Deceased all alone and unarmed, ploughing the land, when obstructed by appellants — *Both parties related to each other, the deceased being a coparcener of the appellants — PW 1 related to both parties and found to be unbiased — PWs 1 and 2 categorically stating that they had gone to the scene of occurrence to prevent the appellants from obstructing the deceased from ploughing the disputed land at his own request — PW 1, in his deposition, stating as to how and in what manner the deceased was attacked with knives by the appellants and also the manner in which the injuries were caused to the deceased by each of them — He identifying the weapons of assault in court — PW 2 supporting him on all material particulars and medical evidence also corroborating his testimony — In absence of any public transport he walked 8 km to lodge the FIR — Held, reliance placed by both the trial court and the High Court on testimonies of PWs 1 and 2 to sustain conviction not misplaced and hence calls for no interference* (Paras 6, 7 and 11). *Ashok*

Kumar v. *State of T.N.*, (2006) 10 SCC 157: (2006) 3 SCC (Cri) 497: AIR 2006 SC 2419: 2006 Cri LJ 2931.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-5-2006]

(r) Section 302 simpliciter

— S. 302 — Passing conviction under, though charge framed under S. 302 r/w S. 149 IPC — Power of appellate or revisional court *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 464, 386, 401 and 399, (2006) 2 SCC 450

[626] — S. 302 — When can each accused be convicted separately under S. 302 simpliciter — *Court should reach to the conclusion on the basis of material placed before it that injuries caused by each accused were sufficient in the ordinary course of nature to cause death and nature of the injuries was homicidal*

To convict the accused of an independent charge under Section 302 IPC, it is necessary that the court should reach to the conclusion that the injuries inflicted by each individual taken in isolation, were sufficient in the ordinary course of nature to cause death of the deceased persons. If the court reaches to the conclusion on the basis of the material placed before it that the injuries were sufficient in the ordinary course of nature to cause death and the nature of injuries was homicidal, the court can convict each and every accused under Section 302 IPC, but if the court cannot conclusively reach to the finding that each and every individual involved in commission of the offence has caused such injuries which are sufficient in the ordinary course of nature to cause death, the accused cannot be convicted under Section 302 IPC. If the injuries caused are sufficient in the ordinary course of nature and they have been caused in furtherance of the common intention, then each and every individual propagating the common intention can be convicted under Section 302 read with Section 34 IPC, although he has not been charged under Section 34 IPC and has been charged under Section 149 IPC along with Section 302 IPC. (Para 8). *Dhaneswar Mahakud* v. *State of Orissa*, (2006) 9 SCC 307: (2006) 2 SCC (Cri) 505: AIR 2006 SC 1727: 2006 Cri LJ 2113.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.P. Naolekar**, JJ. [Date of decision: 5-4-2006]

(s) Section 302 or Section 304

[627] — S. 302 or S. 304 — Accused shooting arrows from a distance without any accuracy and also pelting stones — Arrow shot by the accused-appellant hitting the deceased resulting in his death — *Held, there was no sudden quarrel as alleged by the appellant — He liable to be convicted under S. 304 Part I and sentenced to 10 years' imprisonment* (Paras 4, 20 and 21). *Laxman* v. *State of M.P.*, (2006) 11 SCC 316: (2007) 1 SCC (Cri) 449: AIR 2006 SC 3240: 2006 Cri LJ 4626.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 18-9-2006]

[628] — S. 302 or S. 304 — Single blow injury — Death due to — Conviction in case of — *Whether to be under S. 302 or S. 304 — Held, infliction of only one blow by itself would not mitigate the offence to one under S. 304 — Hence, contention that whenever the death is on account of a single blow, the offence is one under S. 304 and not S. 302, not acceptable* (Paras 26 and 21). *Pulicherla Nagaraju* v. *State of A.P.*, (2006) 11 SCC 444: (2007) 1 SCC (Cri) 500: AIR 2006 SC 3010: 2006 Cri LJ 3899.

Bench Strength **2**. Coram: *G.P. Mathur* and **R.V. Raveendran**, JJ. [Date of decision: 18-8-2006]

[629] — Ss. 302/34 or S. 304 — Appellant 1 allegedly taking out one ubhari (a big stick) from a bullock cart and assaulting the deceased — Deceased was the uncle of the appellants — *Appellants had obtained possession of some lands from the complainants in execution of a decree — Hence, possibility that the deceased and his sons were nurturing grudge against them — Besides, large number of pending litigations between them — Occurrence taking place in front of appellants' house — No premeditation on the part of Appellant 1 — He was unarmed initially and took the ubhari only at a later stage — Son of the deceased admitting that they intended to kill Appellant 1 — Hence, possibility that they were the aggressors — Moreover, statements of the prosecution witnesses as regards the genesis of occurrence and the presence of the prosecution witnesses at different stages not uniform — Faulty investigation, when the same was expected to be fair, particularly when there were cross-cases between the parties — Held, in the circumstances, it is likely that a sudden fight between the parties erupted — However, Appellant 1 has not been able to show that the situation was such that he could reasonably apprehend his death — Hence, he convicted under S. 304 Pt. I and sentenced to RI for 10 years* (Paras 35, 36, 38, 22, 24 and 25). *Surendra* v. *State of Maharashtra*, (2006) 11 SCC 434: (2007) 1 SCC (Cri) 490: AIR 2006 SC 3063.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 24-8-2006]

[630] — S. 302 or S. 304 Pt. I — Free fight (maarpit) — Fatal injury caused to intervenor — Culpability for — *Quarrel between two groups and in that melee appellant causing one fatal injury to deceased K, an old lady, who intervened — Held, offence would come within the purview of S. 304 Pt. I — Hence, conviction and sentence of the appellant*

(s) Section 302 or Section 304 *(contd.)*

under S. 302 set aside and instead he convicted under S. 304 Pt. I and sentenced to seven years' RI (Paras 4 and 5). *Ottupara Mohd.* v. *State of Kerala*, (2006) 9 SCC 209: (2006) 2 SCC (Cri) 620.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *P.P. Naolekar*, JJ. [Date of decision: 25-11-2005]

[631] — S. 302 or S. 304 Pt. I — Intention to cause death — Deceased and accused-appellant co-sharers of the land where the incident took place — *While deceased and his men who were unarmed, and uprooting seedlings from the land, accused persons armed with bhali and lathi, came there and appellant attacked deceased with bhali which pierced his abdomen 4 inches deep as a result of which his intestine and omentum came out through the wound — Doctor who conducted post-mortem opined that death was due to shock and haemorrhage as a result of abdominal injury which was ante-mortem and homicidal in nature — Testimony of PWs as regards cause of death believable and the same corroborated by medical evidence — Having regard to the facts and circumstances, held, appellant had intention to kill or cause such bodily injury as is likely to cause death — Hence conviction under S. 304 Pt. I justified. Sukumar Roy* v. *State of W.B.*, (2006) 10 SCC 635: (2007) 1 SCC (Cri) 58: AIR 2006 SC 3406: 2006 Cri LJ 4776.

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 31-10-2006]

[632] — S. 302 or S. 304 Pt. I — Occurrence taking place in course of sudden quarrel — Hence conviction of appellant altered from S. 302 to S. 304 Pt. I (Paras 2 and 16). *Lachman Singh* v. *State of Haryana*, (2006) 10 SCC 524: (2007) 1 SCC (Cri) 123: AIR 2006 SC 2763: 2006 Cri LJ 4041.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 28-7-2006]

[633] — S. 302 or S. 304 Pt. I r/w Ss. 100 to 105 — Culpability where right of private defence has been exceeded, causing death — *Fact that deceased on the date of incident was proceeding to accused S' field for grazing 60 cattle established — Occurrence taking place in S' field — No right of way on S' agricultural land established — Injuries received by PWs simple while two accused receiving one simple injury each — Genesis of occurrence not disclosed by prosecution — Prosecution not alleging that accused had any grudge against the deceased or had any motive for committing the crime — No material placed by prosecution to prove that accused were the aggressors — Single blow on head of deceased by appellant — Held, if the accused were not aggressors right of private defence was available to them — Moreover, if there was no right of way and there was apprehension in the mind of accused that there was threat of trespass in their land, indisputably they could exercise right of private defence — However, since the appellant was not able to justify the force with which he hit the deceased on the forehead, accused-appellant exceeded his right of private defence — Hence appellant guilty under S. 304 Pt. I and not under S. 302 and sentenced to 10 years' RI with default stipulation* (Paras 11, 12, 14, 15, 16, 20, 21 and 22). *Jalaram* v. *State of Rajasthan*, (2005) 13 SCC 347: (2006) 2 SCC (Cri) 202: AIR 2006 SC 618: 2006 Cri LJ 528.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 24-11-2005]

[634] — S. 302 or S. 304 Pt. I/Pt. II — Double homicide — Conviction under Ss. 304 Pts. I and II — Sustainability — *Accused going to his brother's house armed with a kulhari (axe) and hacking his brother and sister-in-law to death — Trial court convicting him under S. 302 and sentencing him to RI for life — High Court, however, converting the said conviction to S. 304 Pt. I for the first murder and to S. 304 Pt. II for the second murder and sentencing him to RI for 10 years and 7 years respectively — High Court though relying on extra-judicial confession, on the basis of seizure of a lathi found near the dead body opining that such seizure itself showed that the deceased must have assaulted the accused with the lathi whereupon the accused hit the deceased with kulhari in right of private defence — No one's case that accused was beaten by the lathi seized from the place of occurrence — Accused also not alleging that he had received any injury on his body — No evidence that accused sustained injuries by beating — Held, view taken by the High Court was far-fetched — Nature of murder committed one after another, by no stretch of imagination could be said to be in exercise of right of private defence — Even assuming that defence of the respondent with regard to first murder is accepted, the second murder of his sister-in-law can never be said to be in the right of private defence — Besides, evidence on record clearly establishes that accused had gone to the house of the deceased armed with kulhari which shows his intention and premeditated notion to murder the deceased — Cumulative effect of the evidence on record clearly establishes intention of the accused to commit murder — High Court erred in upsetting the well-merited reasoning of the trial court — Hence, conviction and sentence recorded by trial court restored* (Paras 3, 4 and 5). *State of U.P.* v. *Chatur Singh*, (2005) 13 SCC 360: (2006) 2 SCC (Cri) 245: AIR 2006 SC 745: 2006 Cri LJ 545.

Bench Strength **2**. Coram: **H.K. Sema** and *C.K. Thakker*, JJ. [Date of decision: 17-11-2005]

[635] — S. 302 or S. 304 Pt. II — Applicability — *Prosecution alleging that appellant's cattle had damaged the standing crops of the deceased resulting in hot exchange of words and scuffle, whereafter* ***R*** *(elder brother of the appellant) exhorting the appellant to kill the deceased and the appellant firing one shot from his gun which hit the deceased on left flank of the abdomen and he died — One of the eyewitnesses to the occurrence not examined by the prosecution, while the evidence of other found unreliable — Site plan prepared by the IO not showing any damage to the crop by the cattle — Hence, the reason for the scuffle remaining a mystery i.e. genesis of occurrence not proved — Held, appellant acted on an impulse and that too upon instigation — Besides, only one shot was fired — In such situation, appellant cannot be said to have intended to kill the deceased — Hence, appellant liable to be convicted under S. 304 Pt. II and not S. 302* (Paras 13, 14 and 16). *Surendra Singh* v. *State of Uttaranchal*, (2006) 9 SCC 531: (2006) 3 SCC (Cri) 328: AIR 2006 SC 1920: 2006 Cri LJ 2461.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 28-4-2006]

[636] — S. 302 or S. 304 Pt. II — Applicability — Relevance of intention — Accused inflicting a single blow by the blunt side of an axe on the head of the victim on a sudden provocation and without any premeditation — *Injury within a short period (2 days in this case) resulting in death of the victim — Injury received by co-accused not explained by prosecution — In such circumstances right of private defence although not established, S. 304 Pt. II and not S. 302, held, attracted — Hence, sentence of seven years' rigorous imprisonment awarded*

Although a case in regard to exercise of right of private defence has not been established, there are sufficient materials on record to establish that the deceased suffered a single blow at the hands of the appellant on a sudden provocation and without any premeditation. Therefore, the appellant can be held to be guilty of commission of an offence not under Section 302, IPC but under Section 304 Part II thereof. The appellant is, in the peculiar facts and circumstances of the case, sentenced to undergo rigorous imprisonment for a period of seven years. (Paras 36 to 40). *Kailash* v. *State of M.P.*, (2006) 11 SCC 420: (2007) 1 SCC (Cri) 476.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 29-9-2006]

[637] — S. 302 or S. 304 Pt. II — Single dao-blow dealt by A-1 on occipital region of the deceased, preceded by mutual quarrel — Absence of common intention to kill the deceased established — Effect — *Deceased succumbing to the injuries five days after receiving them — Held, considering the prosecution and medical evidence cumulatively, conviction of A-1 cannot fall under S. 302 but at the most under S. 304 Pt. II — Hence, conviction of A-1 under S. 302 altered to S. 304 Pt. II and he sentenced to five years' RI — Fine of Rs 1000 imposed by trial court and affirmed by High Court, maintained* (Para 5). *Abani K. Debnath* v. *State of Tripura*, (2005) 13 SCC 422: (2006) 2 SCC (Cri) 257: AIR 2006 SC 518: 2006 Cri LJ 314.

Bench Strength **2**. Coram: **H.K. Sema** and *R.V. Raveendran*, JJ. [Date of decision: 22-11-2005]

[638] — S. 302 or S. 304 Pt. II — Single blow given by the appellant by picking up a lathi (initially unarmed) in course of a sudden quarrel without any premeditation and without taking any advantage or acting in a cruel manner — *Held, appellant liable to be convicted under S. 304 Pt. II and not under S. 302 — Appellant sentenced to custodial sentence of eight years* (Paras 9 and 11). *Pappu* v. *State of M.P.*, (2006) 7 SCC 391: (2006) 3 SCC (Cri) 283: AIR 2006 SC 2659.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 11-7-2006]

[639] — S. 302 or S. 304 Pt. II — Circumstantial evidence — Murder — Appropriate punishment on facts — *Accused-appellant last seen with deceased — He purchased MOI air gun which was recovered at his instance from another person and was found to be in working condition — Medical evidence that death was due to gunshot wound on chest and that there was chance to cause death if air gun shot fired from a very close range — Conduct of appellant in leaving the place of occurrence and going to another place for a few days — Extra-judicial confession made by appellant to Village Administrative Officer that the firing of the shot took place when the deceased had allegedly stated: "What son-in-law you are going to shoot me. If you want you can shoot. I can see you after you shoot" — Held, although the circumstances may not by itself be sufficient to prove the guilt of the appellant but cumulative effect thereof satisfies the test of proof of guilt of the appellant under S. 304 Pt. II* (Paras 8 to 16, 47 and 48). *Sivakumar* v. *State*, (2006) 1 SCC 714: (2006) 1 SCC (Cri) 470: AIR 2006 SC 653: 2006 Cri LJ 536.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 8-12-2005]

[640] — S. 302 or S. 304 Pt. II — Intention to kill — Absence of — Assault by appellants causing death of deceased — Family dispute pursuant to partition of residential house in which PW 1 was allotted larger portion — *Deceased, an outsider who was on visiting terms with PW 1, took side of PW 1 —*

(s) Section 302 or Section 304 *(contd.)*

When the parties went to the office of Village Administrative Officer, deceased and his wife, PW 2 also accompanied — While PW 1, PW 2 and deceased were returning, a quarrel ensued with appellants near a bus-stop — Thereupon, two appellants inflicted one blow each on head and chest of deceased with firewood log as a result of which deceased died — According to defence case, appellants assaulted in self-defence when deceased attacked with a knife — Although a knife was found at the spot of the incident, it was not the case of the prosecution that any of the accused was carrying a knife — Two days after the incident, Appellant 2 wrote a letter to Superintendent of Police and sent a copy thereof to Inspector of Police, who admitted to have received the same — When complaint was lodged by PW, appellant was also in police station to lodge a complaint — Held, on facts and in the circumstances, appellants had no intention to cause death of deceased — Conviction under S. 304 Pt. II and sentence of 10 years' RI, instead of conviction under S. 302 justified. Karuppusamy v. *State of T.N.*, (2006) 11 SCC 459: (2007) 1 SCC (Cri) 515.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 29-9-2006]

[**641**] — **Ss. 302/304 Pt. II and S. 299 Third Part — Single injury inflicted on the left side of the chest of the deceased** — *Doctor not opining that the injury was sufficient in the ordinary course of nature to cause death or was likely to cause death — No attempt made by the accused to cause serious injury on any vital part of the deceased neither was there any motive or intention to commit murder — Held, the case falls within the third part of Section 299 and will be punishable under the second part of Section 304 IPC as culpable homicide not amounting to murder — Act was done with the knowledge that it was likely to cause death — Hence, conviction altered from S. 302 to S. 304 Pt. II and sentence of RI for 5 years and fine of Rs 1000 with default stipulation imposed* (Paras 10, 11 and 12). *Bunnilal Chaudhary* v. *State of Bihar*, (2006) 10 SCC 639: (2007) 1 SCC (Cri) 66: AIR 2006 SC 2531: 2006 Cri LJ 3297.

Bench Strength **2**. Coram: *Dr. Ar. Lakshmanan* and **Lokeshwar Singh Panta**, JJ. [Date of decision: 5-7-2006]

[**642**] — **S. 304 Pt. I — Act "done with the intention of causing death or of causing such bodily injury as is likely to cause death" — What is** — *Deceased and PW after consuming liquor entering the tea stall of respondent to demand money due to deceased — There they picked up an argument during which deceased abused the respondent — Thereafter a stick carried by respondent's father C snatched by PW and in the process C injured on his face and he fell down — Respondent then first assaulted PW with a knife and then assaulted deceased twice on his back with the knife — Deceased succumbing to his injuries — Held, High Court was justified in altering the conviction of respondent from S. 302 to 304 Pt. I — High Court also justified in holding that sentence of over 4 years' RI undergone by respondent would meet the ends of justice* (Paras 5, 6 and 7). *State of H.P.* v. *Ram Pal*, (2005) 13 SCC 251: (2006) 2 SCC (Cri) 165: AIR 2005 SC 4058: 2005 Cri LJ 4907.

Bench Strength **2**. Coram: *N. Santosh Hegde* and *B.P. Singh*, JJ. [Date of decision: 17-2-2004]

[**643**] — **S. 304 Pt. I — Appellant, who was under the influence of liquor attacking the deceased with a broken soda bottle** — *Quarrel between them leading to the incident not premeditated — However, two injuries inflicted by him on vital parts of the deceased leading to his death — Held, though the appellant had no intention of causing death, but he knew that injuries caused by him were likely to cause death — Case covered by S. 300 Thirdly — Hence, appellant convicted under S. 304 Pt. I and sentenced to 10 years' RI* (Paras 4, 6 and 7). *Ezhilan* v. *State*, (2006) 10 SCC 614: (2007) 1 SCC (Cri) 48.

Bench Strength **2**. Coram: *S.B. Sinha* and *Dalveer Bhandari*, JJ. [Date of decision: 11-7-2006]

[**644**] — **S. 304 Pt. I r/w S. 34 or S. 304 Pt. II r/w S. 34 — Applicability** — *Two appellants, each giving one lathi-blow on the head of the deceased, while the other giving jelli-blow on the left leg of the deceased, resulting in his death — They also assaulting other PWs with jelli-blows and lathi-blows — Trial court noting that there was no intention to commit murder as the accused did not repeat the blows on the head of the deceased — But it attributing to them knowledge that by giving blow on the head of the deceased death was the only consequence and convicting them under S. 304 Pt. I r/w S. 34 — Appeal filed thereagainst dismissed by the High Court — Taking the totality of the evidence into consideration and the special features of the case, held, appellants liable to be convicted under S. 304 Pt. II r/w S. 34 and not S. 304 Pt. I r/w S. 34 — Custodial sentence of seven years imposed* (Paras 27, 5 and 7). *Raj Pal* v. *State of Haryana*, (2006) 9 SCC 678: (2006) 3 SCC (Cri) 361.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 19-4-2006]

— S. 304 Pt. II — Reduction of sentence under — Need for reasons *See* CRIMINAL TRIAL — 'Sentence' — Proportionality, (2006) 6 SCC 8

[**645**] — **S. 304 Pt. II — Injury if sufficient to cause death — Determination of** — *Merely because the*

blow hurled with axe on the head of the victim, who later died, was only one, held, not by itself a ground to hold that such injury was not sufficient to cause death — Hence, in such a case the entire attending circumstances must be taken into consideration for the purpose of finding out the nature of the actual offence committed (Para 23). *Kailash* v. *State of M.P.*, (2006) 11 SCC 420: (2007) 1 SCC (Cri) 476.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 29-9-2006]

Virsa Singh v. State of Punjab, 1958 SCR 1495: AIR 1958 SC 465: 1958 Cri LJ 818, explained

— S. 304-A — Sentence — Reduction of, on offer to compensate heirs of deceased, and serious ailment of accused plus fact that incident took place 18 years back *See* CONSTITUTION OF INDIA — 'Article 136' — Scope of Interference — Interference in criminal matters — Sentence, Art. 136, (2005) 13 SCC 386

— S. 304-B *See also* S. 302 — Dowry Death, above

See also CRIMINAL TRIAL — 'Circumstantial evidence' — Last seen together, (2006) 10 SCC 681

— S. 304-B — Dowry death — Addition of charge relating to *See* CRIMINAL PROCEDURE CODE, 1973, S. 216, (2006) 10 SCC 322

[646] — S. 304-B — Object and philosophy behind enactment of — *Restated — Crimes against women and children — Dowry death — Social evils and malpractices — Dowry* (Paras 41, 42 and 46). *Ram Badan Sharma* v. *State of Bihar*, (2006) 10 SCC 115: (2007) 1 SCC (Cri) 166: AIR 2006 SC 2855: 2006 Cri LJ 4070.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 21-8-2006]

Soni Devrajbhai Babubhai v. State of Gujarat, (1991) 4 SCC 298: 1991 SCC (Cri) 959, relied on

[647] — S. 304-B — Dowry Death — Ingredients

The essential ingredients of the offence under Section 304-B are (*i*) death of a woman must have been caused by any burns or bodily injury or otherwise than under normal circumstances; (*ii*) such death must have occurred within seven years of marriage; (*iii*) *soon before her death* she was subjected to cruelty or harassment by her husband or relative of her husband; (*iv*) such cruelty or harassment must be in connection with the demand of dowry; and (*v*) such cruelty is shown to have been meted out to the woman soon before her death. (Para 29). *T. Aruntperunjothi* v. *State*, (2006) 9 SCC 467: (2006) 2 SCC (Cri) 528: AIR 2006 SC 2475: 2006 Cri LJ 3290: (2006) 102 Cut LT 95.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-4-2006]

[648] — S. 304-B — Dowry death — Ingredients of S. 304-B, if established — Legal fiction under — *Soon before the death, deceased was subjected to cruelty or harassment by her husband for or in connection with demand of dowry — Once this is established, a legal fiction is created under S. 304-B whereby such death would be called dowry death — On facts held, ingredients of S. 304-B IPC r/w S. 113-B, Evidence Act not satisfied — Evidence Act, 1872, S. 113-B — Social Evils and Malpractices — Dowry — Crimes against women and children — Dowry*

The deceased was married to the appellant on 5-10-1986. She delivered a male child at her parents' house on 23-4-1988. At the time of delivery she had developed some complications as a result of which she had to be shifted to a nursing home. There was some dispute as to who took her to the nursing home, her husband (appellant) or her father. The delivery of the child was premature and the child expired within two days of its birth. The deceased died of poisoning on 26-7-1988 at her matrimonial home. On the basis of statements made by the deceased's father before the IO, a case under Section 304-B IPC was registered against the appellant (the deceased's husband) and others on the allegation that after solemnisation of marriage of the appellant's younger brother on 24-1-1988, the accused started taunting and harassing the deceased for bringing less dowry as the wife of the appellant's younger brother had brought refrigerator, television and cooler. Allegedly, to fulfil the said demand of the accused, the complainant paid a sum of Rs 3000 around Diwali on one occasion and Rs 1000 on two other occasions within two months therefrom. It was further alleged that in the month of March 1988, when the deceased's father went to the house of the in-laws to bring her to his house as she was in the family way, the accused refused to send her with him. It was further alleged that when the deceased's brother went to the deceased's matrimonial home, the deceased had told him that his father should take her away otherwise the accused would kill her at the time of the delivery. However, from the records it appears that the deceased's father had merely stated: "My daughter had died due to non-payment of dowry to the satisfaction of the accused, by me." He did not say that any other demand was made or his daughter was subjected to any other form of cruelty or harassment. In the cross-examination he contended that he had stated before the investigating officer that the accused persons started taunting his daughter for not bringing refrigerator, cooler and television but such a statement was not found to have been made before the investigating officer. He even did not make any statement before the police that the accused persons either in unison or individually demanded dowry. His statement was also recorded by a Magistrate holding the post of DORG. He did not make any statement before the Magistrate in regard to the demand of or taking of

Rs 3000 for purchase of refrigerator, cooler and television although he made such a statement in court. He also made a statement before the DORG to the effect that his daughter and son-in-law collected Rs 3000 for purchasing a stereo and two months thereafter his daughter took Rs 1000 for installation of hand pump. However, the deceased's mother categorically admitted that she had no grievance as against her son-in-law, nor did she ever make any complaint.

The trial court convicted the appellant and his mother under Section 304-B IPC and sentenced them to undergo seven years' RI. The trial court relying upon or on the basis of the evidence of the prosecution witnesses arrived at a finding that the dowry was paid to the appellant and his mother. The High Court, on the other hand, did not discuss the merit of the matter so far as the appellant is concerned but concentrated on the role played by his mother and came to the finding that she did not accept any dowry. It propounded a theory which was not the prosecution case that the deceased must have consumed poison to finish herself allegedly on the ground that when the deceased's father came to see her on 25-7-1988, he must have been insulted or hurt that his daughter was not happy in the house of her in-laws.

Allowing the appeal of the accused-appellant,

Held :

By virtue of Section 304-B IPC a legal fiction has been created in the said provision to the effect that in the event it is established that soon before the death the deceased was subjected to cruelty or harassment by her husband or any of his relatives; for or in connection with any demand of dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. From a conjoint reading of Section 304-B of the Penal Code and Section 113-B of the Evidence Act, it will be apparent that a presumption arising thereunder will operate if the prosecution is able to establish the circumstances as set out in Section 304-B of the Penal Code. (Paras 16 and 17)

The ingredients of the aforementioned provisions are:

(*1*) That the death of the woman was caused by any burns or bodily injury or in some circumstances which were not normal; (*2*) such death occurred within 7 years from the date of her marriage; (*3*) that the victim was subjected to cruelty or harassment by her husband or any relative of her husband; (*4*) such cruelty or harassment was for or in connection with the demand of dowry; and (*5*) it is established that such cruelty and harassment was made soon before her death. (Para 18)

Even proceeding on the basis that in this case prosecution has established the case of payment of dowry to the extent of Rs 5000, the question still would remain as to whether the demand for dowry was made soon before the deceased was treated cruelly or harassed by the appellant. The brother of the deceased was not examined. It was, therefore, not proved that any apprehension was expressed by the deceased that she would be killed during delivery of the child. Concededly, there is no evidence on record to show that the deceased was subjected to any cruelty or harassment between April 1988 and the date of her death. In the aforementioned situation, the presumption arising either under Section 304-B of the Penal Code or Section 113-B of the Evidence Act could not be invoked against the appellant. The prosecution, therefore, must be held to have failed to establish any case against the appellant. (Paras 8, 14 and 22)

In the case of unnatural death of a married woman as in a case of this nature, the husband could be prosecuted under Sections 302, 304-B and 306 of the Penal Code. Omission to frame charges under Section 306 in terms of Section 215 of the Code of Criminal Procedure may or may not result in failure of justice, or prejudice the accused. It cannot, therefore, be said that in all cases, an accused may be held guilty of commission of an offence under Section 306 of the Penal Code wherever the prosecution fails to establish the charge against him under Section 304-B thereof. Moreover, ordinarily such a plea should not be allowed to be raised for the first time before the court unless the materials on record are such which would establish the said charge against the accused. (Paras 19, 24 and 25). *Harjit Singh* v. *State of Punjab*, (2006) 1 SCC 463: (2006) 1 SCC (Cri) 417: AIR 2006 SC 680: 2006 Cri LJ 554.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 8-12-2005]

[649] — S. 304-B — Dowry death — Ingredients to sustain conviction for — *(i) Demand for dowry and consequent harassment for non-fulfilment thereof; (ii) Death of the deceased; and (iii) Death under unnatural circumstances within 7 years of marriage — Even in case of suicide S. 304-B attracted — Crimes against women and children — Dowry death — Social evils and malpractices — Dowry* (Para 35). *Ram Badan Sharma* v. *State of Bihar*, (2006) 10 SCC 115: (2007) 1 SCC (Cri) 166: AIR 2006 SC 2855: 2006 Cri LJ 4070.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 21-8-2006]

[650] — S. 304-B — Dowry death — "Soon before her death" — What would constitute, held, depends upon facts and circumstances of each case

(Para 31). *T. Aruntperunjothi* v. *State*, (2006) 9 SCC 467: (2006) 2 SCC (Cri) 528: AIR 2006 SC 2475: 2006 Cri LJ 3290: (2006) 102 Cut LT 95.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-4-2006]

[651] — S. 304-B — Dowry death — Presumptive evidence — Persistent demand for dowry and harassment consequent to non-fulfilment thereof "soon before" the death, within seven years of marriage, proved — *Deceased in good condition until she consumed "prasad" and only thereafter complained of acute stomach pain — She neither taken to any doctor, nor any doctor called, nor any medical treatment administered to her — Her parents living only a few miles away informed after three days of occurrence by a letter sent through a barber — Dead body hurriedly disposed of and no autopsy conducted — Held, no infirmity in the impugned judgment of the High Court confirming the conviction of the appellants discernible — Evidence Act, 1872, S. 113-B — Presumption under — Social evils and malpractices — Dowry* (Paras 3, 4, 22, 23 and 33). *Ram Badan Sharma* v. *State of Bihar*, (2006) 10 SCC 115: (2007) 1 SCC (Cri) 166: AIR 2006 SC 2855: 2006 Cri LJ 4070.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 21-8-2006]

Hem Chand v. State of Haryana, (1994) 6 SCC 727: 1995 SCC (Cri) 36; Satvir Singh v. State of Punjab, (2001) 8 SCC 633: 2002 SCC (Cri) 48; Hira Lal v. State (Govt. of NCT), Delhi, (2003) 8 SCC 80: 2003 SCC (Cri) 2016; Dhian Singh v. State of Punjab, (2004) 7 SCC 759: 2004 SCC (Cri) 2077; Sarojini v. State of M.P., 1993 Supp (4) SCC 632: 1994 SCC (Cri) 124; State of Karnataka v. M.V. Manjunathegowda, (2003) 2 SCC 188: 2003 SCC (Cri) 467; Muthu Kutty v. State, (2005) 9 SCC 113: 2005 SCC (Cri) 1202; Harjit Singh v. State of Punjab, (2006) 1 SCC 463: (2006) 1 SCC (Cri) 417; Kamesh Panjiyar v. State of Bihar, (2005) 2 SCC 388: 2005 SCC (Cri) 511; State of Punjab v. Iqbal Singh, (1991) 3 SCC 1: 1991 SCC (Cri) 513, relied on

[652] — S. 304-B — Suicidal death of a woman — Whether she was subjected to cruelty or harassment by her husband for or in connection with demand for dowry soon before her death — Proof — *Conduct of family members of deceased was relevant as no complaint was made by them and they took back all articles given in marriage — Instead deceased's husband (appellant) himself lodged the FIR — Demand for dowry not established by cogent evidence — No evidence, direct or indirect, as regards harassment or cruelty by appellant against his wife — Necessary ingredients of circumstantial evidence for holding appellant guilty not considered by trial court as well as High Court — Even if there was misunderstanding between appellant and deceased, that would not automatically lead to the conclusion that appellant committed offence under S. 304-B as law does not raise such a presumption — Trial court took erroneous view that another person had made demands from deceased's parents as messenger of appellant and that his insistence revealed that what was demanded by that person was a dowry demand — Such a hypothesis could not be made basis for conviction of appellant under S. 304-B — Defence version that cause of death was that deceased had insisted to go to her mother's house but she was not allowed, plausible — Having regard to the peculiar features of the case, held, cruelty or harassment for dowry being the cause for death of the deceased, not established beyond all reasonable doubt — Conviction under S. 304-B not sustainable. T. Aruntperunjothi* v. *State*, (2006) 9 SCC 467: (2006) 2 SCC (Cri) 528: AIR 2006 SC 2475: 2006 Cri LJ 3290: (2006) 102 Cut LT 95.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-4-2006]

[653] — S. 304-B — Award of minimum statutory sentence of seven years under — Interference with, by Supreme Court by grant of special leave under Art. 136 — Impermissibility. *Sham Singh* v. *State of Punjab*, (2006) 5 SCC 512: (2006) 2 SCC (Cri) 488.

Bench Strength **3**. Coram: *B.N. Agrawal, A.K. Mathur* and *Dalveer Bhandari*, JJ. [Date of decision: 23-2-2006]

[654] — S. 304-B [S. 302] — Circumstantial evidence — Burden of proof — *No explanation or false explanation against incriminating circumstance(s) — If accused fails to offer any cogent explanation or offers an explanation which is untrue, then it can be treated as an additional link in the chain of circumstances against the accused to make it complete — Evidence Act, 1872, S. 106 and Ill. (b)*

The demand for dowry or money from the parents of the bride has shown a phenomenal increase in the last few years. Cases are frequently coming before the courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it would be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult

to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (*b*) appended to this section throws some light on the content and scope of this provision. (Paras 13 and 14)

In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. (Para 21)

The High Court was, therefore, perfectly right in allowing the appeal filed by the State and in convicting the appellant under Section 302 IPC and sentencing him to life imprisonment thereunder. (Para 24). *Trimukh Maroti Kirkan* v. *State of Maharashtra*, (2006) 10 SCC 681: (2007) 1 SCC (Cri) 80: (2006) 4 KLT 638.

Bench Strength **2**. Coram: **G.P. Mathur** and *R.V. Raveendran*, JJ. [Date of decision: 11-10-2006]

[655] — S. 304-B [S. 302] — Dowry death — Circumstantial evidence — Burden of proof — Nature of — *Held, is of a lighter character where the offence is committed in secrecy inside a house — In view of S. 106, Evidence Act there is also a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed — They cannot get away by keeping quiet and on the premise that the prosecution must discharge its burden of proving the case — Evidence Act, 1872, S. 106*

The demand for dowry or money from the parents of the bride has shown a phenomenal increase in the last few years. Cases are frequently coming before the courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it would be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (*b*) appended to this section throws some light on the content and scope of this provision. (Paras 13 and 14)

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation. (Para 15)

The High Court was, therefore, perfectly right in allowing the appeal filed by the State and in convicting the appellant under Section 302 IPC and sentencing him to life imprisonment thereunder. (Para 24). *Trimukh Maroti Kirkan* v. *State of Maharashtra*, (2006) 10 SCC 681: (2007) 1 SCC (Cri) 80: (2006) 4 KLT 638.

Bench Strength **2**. Coram: **G.P. Mathur** and *R.V. Raveendran*, JJ. [Date of decision: 11-10-2006]

[656] — S. 304-B — Dowry death — Conviction for — Reduction of sentence — When warranted — *Unnatural death of the victim within three years of her marriage with Appellant 1 — Demand for dowry, on account of which the deceased was constantly harassed by her husband and in-laws, established — Hence held, their conviction under S. 304-B as recorded by courts below, justified — However, considering the old age of the in-laws, sentence of imprisonment for 10 years reduced to 7 years — Criminal Trial — Sentence — Mitigating circumstances or factors — Old age* (Paras 2, 3 and 4). *Taiyab Khan* v. *State of Bihar (Now Jharkhand)*, (2005) 13 SCC 455: (2006) 2 SCC (Cri) 263: AIR 2006 SC 673: 2006 Cri LJ 544.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **Arun Kumar**, JJ. [Date of decision: 23-11-2005]

[657] — Ss. 304-B, 306 and 498-A — Dowry suicide-death — Sustainability of conviction — Direct and reasonable nexus between suicide and cruelty meted out — *Death of the bride within four months of her marriage — Harassment and cruelty meted out to the deceased demanding more dowry/tape recorder immediately after her marriage proved — Reluctance of the deceased to return to her matrimonial home established — Held, there was direct and reasonable nexus of the commission of suicide by the deceased with the act of cruelty to which the deceased was subjected to by the accused-appellants — Hence, conviction of the appellants under Ss. 306 and 498-A sustainable — Evidence Act, 1872, S. 113-A* (Paras 14 to 22). *Sahebrao* v. *State of Maharashtra*, (2006) 9 SCC 794: (2006) 3 SCC (Cri) 408: AIR 2006 SC 2002: 2006 Cri LJ 2881.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.P. Naolekar**, JJ. [Date of decision: 3-5-2006]

— Ss. 304-B and 498-A *See* CRIMINAL PROCEDURE CODE, 1973, S. 389, (2006) 9 SCC 602

[658] — S. 306 — Ingredients — Held, on facts, offence under S. 306 not made out from the material on record — *Evidence Act, 1872, S. 113-A*

Before invoking the provisions of Section 306 IPC, it is necessary to establish that: (*i*) the deceased committed suicide, and (*ii*) she had been subjected to cruelty within the meaning of Section 498-A IPC. Only in the event those facts are established, a presumption in terms of Section 113-A of the Evidence Act could be raised. In the instant case, the prosecution has not been able to prove that the deceased was subjected to cruelty within the meaning of Section 498-A IPC. No case that the deceased committed suicide was also made out. The ingredients of Sections 306 and 304-B IPC are different and distinct. In any event, no evidence has been brought on record to show that there has been any act of omission or commission on the part of the accused, before the death of the deceased to demonstrate that the appellant was responsible for the same. There is no evidence to sustain the observation of the High Court that when her father came to see her, he must have been insulted or felt hurt as she might have been subjected to harassment. (Paras 26, 27 and 30). *Harjit Singh* v. *State of Punjab*, (2006) 1 SCC 463: (2006) 1 SCC (Cri) 417: AIR 2006 SC 680: 2006 Cri LJ 554.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 8-12-2005]

[659] — Ss. 306 and 304-B — Accused not charged under S. 306 — If can be convicted under S. 306 — *Contention that even if accused cannot be convicted under S. 304-B, he can still be convicted under S. 306, cannot be accepted — This cannot be claimed in every case — Such plea cannot be allowed to be raised for the first time before the Court unless charge under S. 306 is made out from materials on record*

In the case of unnatural death of a married woman as in a case of this nature, the husband could be prosecuted under Sections 302, 304-B and 306 of the Penal Code. Omission to frame charges under Section 306 in terms of Section 215 of the Code of Criminal Procedure may or may not result in failure of justice, or prejudice the accused. It cannot, therefore, be said that in all cases, an accused may be held guilty of commission of an offence under Section 306 of the Penal Code wherever the prosecution fails to establish the charge against him under Section 304-B thereof. Moreover, ordinarily such a plea should not be allowed to be raised for the first time before the court unless the materials on record are such which would establish the said charge against the accused. (Paras 19, 24 and 25). *Harjit Singh* v. *State of Punjab*, (2006) 1 SCC 463: (2006) 1 SCC (Cri) 417: AIR 2006 SC 680: 2006 Cri LJ 554.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 8-12-2005]

[660] — S. 307 — Attempt to murder — Appreciation of evidence — *Appellant giving two "khukhri" blows to PW 1 (ASI) at the police outpost and grievously injuring him — Appellant thereafter overpowered by constables PWs 4 and 5 and arrested — Incident recorded in the daily diary and sent to Distt. Headquarters situated 26 kms. away on basis whereof FIR was lodged and investigation commenced — Undisputed that IO had to walk all the way in difficult terrain from the Distt. Headquarters to the place of occurrence and hence he could reach there only the next night — Appellant neither examining any defence witness nor entering any particular defence — PW 1 stating in great detail injuries suffered by him which stood corroborated by medical evidence — Testimony of PW 1 also corroborated in material particulars by testimonies of PWs 4 and 5, which were found credible — Held, conviction of appellant under S. 307 by courts below sustainable* (Paras 1, 8, 9, 11, 12 and 15). *Bir Singh* v. *State of H.P.*, (2006) 9 SCC 579: (2006) 3 SCC (Cri) 343: AIR 2006 SC 1944: 2006 Cri LJ 2456: (2006) 102 Cut LT 426.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 25-4-2006]

[661] — S. 307 — Attempt to murder — Conviction — Sustainability — *For justifying conviction under S. 307, held, intent coupled with some overt act in execution thereof need be present — Not essential that injury inflicted should be capable of causing*

death, though nature of injury actually caused may give considerable assistance in inferring the intention of the accused — Intention of accused can also be deduced from other circumstances and may even, in some cases, be ascertained without any reference to actual wounds — Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under the circumstances mentioned in the section — An attempt in order to be criminal need not be the penultimate act (Para 13). *Lachman Singh* v. *State of Haryana*, (2006) 10 SCC 524: (2007) 1 SCC (Cri) 123: AIR 2006 SC 2763: 2006 Cri LJ 4041.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 28-7-2006]

[662] — **S. 307 — Conviction under — Requisites for** — *Held, to justify conviction under S. 307 it is sufficient if there is an intent coupled with some overt act in execution thereof — Not essential that bodily injury capable of causing death should have been inflicted — Intention can be deduced not only from the nature of injury caused but also from other circumstances and may even, in some cases, be ascertained without any reference to actual wounds — Distinction between the act of the accused and its result — Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section — An attempt in order to be criminal need not be the penultimate act — On facts, accused brandishing his gun and threatening complainant of dire consequences on his intervention in the altercation between appellant and complainant's sister-in-law — Despite that complainant catching hold of the gun whereupon appellant hurling abuses and threatening to kill him — Thereafter, appellant fired the gun and the bullet ripped off flesh from complainant's right calf — Complainant still grappled with the appellant and prevented him from reloading the gun — On such facts and circumstances, held, accused rightly convicted under S. 307* (Paras 3 and 9). *Bipin Bihari* v. *State of M.P.*, (2006) 8 SCC 799: (2007) 1 SCC (Cri) 25.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 20-9-2006]

— Ss. 307, 324 and 114 *See* CRIMINAL TRIAL — 'Sentence' — Reduction of sentence, (2006) 2 SCC 359

[663] — **Ss. 307 and 498-A — Attempt to murder — Strangulation** — *Clear and categoric case of victim that while she was sleeping her husband (appellant) tried to strangulate her — She remaining unconscious for almost one-and-a-half months — Nature of injuries found on her neck fully consistent with her allegations — Her stray statement in cross-examination that she was deposing at the instance of her father, of no use to the defence because her testimony otherwise found trustworthy as there was no discrepancy in her statement to the police and her deposition in court — Statement by doctor that injuries could have been caused by hard and blunt object, inconsequential, since he was not cross-examined on the issue — Held, offence under S. 307 stood proved and hence sentence of RI for five years' and fine of Rs 10,000 with default stipulation, imposed by High Court confirmed, and conviction under S. 498-A affirmed* (Paras 5 and 7). *Vijayakumar Ramchandra Agarwal* v. *State of Maharashtra*, (2006) 9 SCC 604: (2006) 3 SCC (Cri) 352.

Bench Strength **2**. Coram: **B.P. Singh** and *Altamas Kabir*, JJ. [Date of decision: 8-3-2006]

[664] — **S. 323 — Voluntarily causing hurt — Role played by appellant in the crime along with other accused** — *Trial court as well as High Court found some overt acts on the part of appellant — Held, it is not of much significance as to what exact role was played by appellant as his presence was not disbelieved* (Para 20). *Subhash Maruti Avasare* v. *State of Maharashtra*, (2006) 10 SCC 631: (2007) 1 SCC (Cri) 54.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 19-10-2006]

[665] — **Ss. 325 & 326 or Ss. 302/149, Ss. 307/149 & 148 — Sentence of conviction imposed by trial court under Ss. 302/149 for causing death of *R*, under Ss. 307/149 for attempting to murder *RW* and Ss. 148/149, set aside by High Court and Respondents 2 to 6 convicted under Ss. 325 and 326 — Sustainability** — *Dispute regarding removing of motor from the well culminating in a fight wherein **R** sustained grievous injuries and was admitted in hospital on 17-9-1992 but was discharged on 25-9-1992 — However, he was again admitted on 28-9-1992 and was operated upon, but he expired on 30-9-1992 — The facts that the well was jointly owned by both the parties, that both sides caused injuries to members of other side and that the well was situated in the land of the respondents', undisputed — Electric motor installed in the well found to be belonging to one of the respondents and prosecution laying false claim thereover — Evidence of doctor suggestive of the fact that it was possible that the deceased may have suffered a head injury after he was discharged from the hospital since no such injury was detected when x-ray was taken on his admission in hospital immediately after occurrence — Held, since the complainants had gone to the respondents' land where the well was situated for no special purpose, High Court was right in holding that respondents had not formed any common intention nor were guilty for causing death of deceased or attempting to murder **RW** —*

Hence, interference with impugned judgment not called for (Paras 22 to 26, 8 and 13). *Umrao* v. *State of Haryana*, (2006) 10 SCC 136: (2006) 3 SCC (Cri) 482: AIR 2006 SC 2152: 2006 Cri LJ 2798.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 12-5-2006]

[666] — **Ss. 325/109, 302/109 & 302/34 — Conviction under Ss. 325/109 in absence of separate charge — Sustainability** — *A-1 and A-2 convicted under Ss. 302/34 and sentenced to life imprisonment whereas A-3 convicted under Ss. 302/109 — Sentence of A-1 commuted by State and appeal preferred by A-2 dismissed by Supreme Court — On appeal being preferred by A-3, conviction under Ss. 302/109 converted into that under Ss. 325/109 — Held, conviction of A-3 under Ss. 325/109 cannot be sustained — Principal offender having been convicted under Ss. 302/34, A-3 alone cannot be convicted under Ss. 325/109 for which no separate charge framed against him — Even otherwise offence under S. 109 not made out by evidence on record* (Para 4). *Shivananda Mundodi* v. *State of Karnataka*, (2006) 9 SCC 191: (2006) 2 SCC (Cri) 616.

Bench Strength **2**. Coram: *H.K. Sema* and *B.N. Srikrishna*, JJ. [Date of decision: 9-11-2005]

— **S. 326** *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 320 and 354, (2006) 9 SCC 255

— **Ss. 326, 323 & 324 r/w S. 149** *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 378 and 386, (2006) 10 SCC 313

[667] — **Ss. 326, 323 and 324 r/w S. 149 — Unlawful assembly of 27 persons, including the appellants, armed variously, alleged to have assaulted *S* (PW 4) and when the womenfolk (PWs 6, 7, 9 and 10) ran to save him they were also beaten up** — *Testimony of PW 3 (a neighbour and an eyewitness) read with evidence of PWs 4, 6, 7, 9 and 10 clearly establishing the identity of the appellants as the assailants — Neither S nor the womenfolk were armed while the appellants fully armed had entered S's house shouting "kill/hit" — Evidence of eyewitnesses also making it clear that but for a police van intervening at that time, there was likelihood of S and the womenfolk sustaining more injuries — Long-standing enmity between the victim and the appellants established — Cross-complaint by the defence not material since none of them were injured — Held, in such circumstances the appellants were rightly held guilty by the High Court — Further held, mere fact that there was enmity between the two groups cannot be a ground to reject the clear evidence of eyewitnesses* (Paras 9 to 15). *Kallu* v. *State of M.P.*, (2006) 10 SCC 313: (2006) 3 SCC (Cri) 546: AIR 2006 SC 831: 2006 Cri LJ 799.

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 4-1-2006]

— **Ss. 342, 389, 469, 471 and 120-B** *See* CRIMINAL PROCEDURE CODE, 1973, S. 197, (2006) 1 SCC 557

[668] — **S. 354 — Assault or criminal force on a woman with intent to outrage her modesty — Test to determine whether modesty of woman outraged, assaulted or insulted** — *Meaning of word "modesty" — Case-law referred to in this regard — Words and phrases — "Modesty", "modesty of a woman"* (Paras 41 to 43). *Tarkeshwar Sahu* v. *State of Bihar (Now Jharkhand)*, (2006) 8 SCC 560: (2006) 3 SCC (Cri) 556.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

[669] — **S. 354 — Outraging the modesty of a woman — Essentials to constitute offence of** — *Held, intention to outrage modesty of a woman or knowledge that the act of the accused would result in outraging her modesty is the gravamen of the offence — The reaction of the woman is very relevant, but its absence is not always decisive — Appellant forcibly taking prosecutrix/victim (aged about 12 years) to his gumti with intention of committing illicit intercourse — But, before he could do anything, hearing alarm raised by prosecutrix, the father of prosecutrix and other villagers assembling there and rescuing the prosecutrix — Held, offence committed squarely covered under S. 354 — Hence, appellant convicted thereunder — Sentenced to 2 years' RI — Crimes against women and children — Eve teasing*

So far as the offence under Section 354 IPC is concerned, intention to outrage the modesty of a woman or knowledge that the act of the accused would result in outraging her modesty is the gravamen of the offence. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. (Paras 39 and 40)

Therefore, on evaluation of the entire evidence and documents on record, the appellant is clearly guilty of the offences under Sections 366 and 354 IPC. He is sentenced to undergo five years' imprisonment under Section 366 IPC and two years' RI under Section 354 IPC. (Para 59). *Tarkeshwar Sahu* v. *State of Bihar (Now Jharkhand)*, (2006) 8 SCC 560: (2006) 3 SCC (Cri) 556.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

[670] — **Ss. 364, 302 & 323 r/w 120-B — Reappreciation of evidence — Series of kidnapping of children and their murder — Approver's evidence — Fully corroborated by other evidence** — *Sessions Judge after meticulously considering*

each item of evidence, held the accused-appellants guilty — High Court also, on reappreciation of each item of evidence, confirmed the findings of Sessions Judge — On further reappreciation of evidence held, evidence adduced by prosecution proved beyond reasonable doubt guilt of the appellants — Hence conviction confirmed (Paras 25, 27, 29 and 30). *Renuka Bai* v. *State of Maharashtra*, (2006) 7 SCC 442: (2006) 3 SCC (Cri) 290: AIR 2006 SC 3056.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *G.P. Mathur*, JJ. [Date of decision: 31-8-2006]

[671] — S. 366 — Kidnapping a woman (girl aged about 12 years in this case) to compel her to illicit intercourse — Conviction for — *Intention/knowledge required on the part of accused at the relevant time — Appellant forcibly taking prosecutrix/victim to his gumti — But, before he could ravish her, hearing alarm raised by prosecutrix, the father of prosecutrix and other villagers assembling there and rescuing the prosecutrix — Held, during kidnapping or forcibly taking prosecutrix to his gumti, appellant had intention to commit illicit intercourse or knowledge that it was likely that prosecutrix would be forced to have illicit intercourse — Hence, offence committed squarely covered under S. 366 — Appellant convicted thereunder — Sentenced to imprisonment for 5 years — Crimes against women and children — Kidnapping*

The essential ingredient of the offence punishable under Section 366 IPC is that when a person has forcibly taken a minor girl with the intention as specified in that section, then the offence is clearly made out. In the instant case, the act of the accused proves that during the kidnapping of the prosecutrix or forcibly taking her to his gumti, the accused had intention or knew it likely that the prosecutrix would be forced to have illicit intercourse. Hence, it is not a mere case of kidnapping for indecent assault but the purpose for which kidnapping was done by the accused has been proved. It is a different matter that the accused failed at the stage of preparation of committing the offence itself. (Paras 30 and 35). *Tarkeshwar Sahu* v. *State of Bihar (Now Jharkhand)*, (2006) 8 SCC 560: (2006) 3 SCC (Cri) 556.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

[672] — S. 366 — Kidnapping, abducting or inducing a woman — Conditions for applicability of S. 366 — *Mere abduction is not enough to attract the provision — Prosecution must further prove that the abduction was for the purposes mentioned in S. 366 — After abduction of the woman accused-appellant departed and the other accused committed the offence as alleged by the prosecution but that would not make the appellant liable to conviction under S. 366 — On facts held, prosecution failed to prove charge under S. 366 against appellant — Crimes against women and children — Kidnapping*

According to the prosecution case, the prosecutrix and her husband, the complainant, were labourers. On the night of the occurrence, when the prosecutrix went out of the house to attend call of nature the appellant along with *S* at point of a knife gave her threats and abducted her against her wishes. The complainant lodged a report next morning at the police station but the same was not registered properly. However, the prosecutrix in her evidence before court deposed that on the day of the incident in the evening the appellant came with *S* and they told that she had no child and then asked her to show her hand. On her refusal the appellant forcibly caught her hand and *S* applied some medicine. Thereafter, they again came at 10-11 p.m. and forcibly made her to get up. *S* forcibly caught her mouth and the appellant pointed a knife towards her and threatened not to raise alarm. *S* and the appellant then took her on foot upto village *G*. Thereafter, she accompanied *S* as the appellant left them there. *S* then took the prosecutrix to another place where she was sexually exploited and raped by *S*. The prosecutrix escaped therefrom and after reaching her maternal uncle's place she narrated the incident on the basis of which a report was lodged to the SP and a case was registered against the accused persons. The trial court convicted the appellant under Sections 366 and 506-B IPC and sentenced him to 2 years' RI with fine of Rs 500 and one years' RI with fine of Rs 500 respectively thereunder. Accused *S* was convicted under Sections 366 and 376 IPC. The High Court in appeals preferred by the appellant and *S*, confirmed the order of the trial court. As *S* did not file any further appeal, the order of conviction and sentence against him attained finality. The appellant preferred the present appeal before the Supreme Court by special leave.

Allowing the appeal and setting aside the order of conviction and sentence against him

Held :

To constitute an offence under Section 366 IPC, it is necessary for the prosecution to prove that the accused induced the complainant woman or compelled by force to go from any place, that such inducement was by deceitful means, that such abduction took place with the intent that the complainant may be seduced to illicit intercourse and/or that the accused knew it to be likely that the complainant may be seduced to illicit intercourse as a result of her abduction. So far as a charge under Section 366 IPC is concerned, mere finding that a woman was abducted is not enough; it must further be proved that the accused abducted the woman with the intent that she

may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse. Unless the prosecution proves that the abduction is for the purposes mentioned in Section 366 IPC, the Court cannot hold the accused guilty and punish him under Section 366 IPC. In this case, the prosecutrix nowhere alleged that she was abducted with the intention to commit an offence, that she was compelled to marry the accused or any other person or that the accused knew that she would be forced or seduced to illicit intercourse or that it was likely that she would be forced or seduced to illicit intercourse. (Paras 11 and 12)

The story unfolded from the evidence led by the prosecution appears to be that the accused-appellant along with the other accused in the evening went to the house of the prosecutrix and the other accused applied some medicine on her hand so that she might get pregnant after 10 years of marriage. The accused might have persuaded her to accompany them so that they could administer the medicine to her and she being an illiterate lady believing in the superstitions agreed to accompany them. After the accused-appellant left both of them at village *G* the other accused had other intentions and committed the offence as alleged by the prosecution. That does not *ipso facto* prove the fact that from the very beginning the accused-appellant had any intention of inducing the prosecutrix to forcibly marry him or the other accused or she was induced or seduced to illicit intercourse with the accused-appellant or with the other person in whose company he left her at village *G* the accused-appellant made any advances against the prosecutrix so as to show his intention of committing forcible intercourse with her. (Para 13)

It appears from the evidence of the prosecutrix that the story of the prosecution as alleged in the FIR that the prosecutrix was abducted when she had gone to attend the call of nature has been given a complete go-by by the prosecutrix. Further, it is difficult to believe that the prosecutrix who is a mature lady married for 10 years would be made to walk from her place of residence to the other village and she would not raise any hue and cry apart from the fact that her husband who was sleeping with her had woken up and yet the accused had forcibly taken the prosecutrix away from her house. The husband in the natural course of conduct would have resisted his wife being taken away forcibly. If he had some handicap because of being single, he would have certainly raised alarm and called the other persons. The place from where the prosecutrix was taken away, as referred in the FIR on the one hand and stated in the evidence of the prosecutrix on the other, raises a grave doubt about the happening of the incident as alleged by the prosecution. Delay in lodging the FIR is another factor which creates doubt in the prosecution version. (Paras 8 and 10)

In an overall consideration of the material placed on record by the prosecution, it is not possible to find that the prosecution has proved that the accused-appellant has committed an offence under Section 366 IPC. There is a doubt as to the place of incident and the motive of the accused in taking away the prosecutrix. It is difficult to believe in the story put up by the prosecutrix that she was forced to leave her place of residence under a threat by showing a knife to her. (Para 14). *Gabbu* v. *State of M.P.*, (2006) 5 SCC 740: (2006) 3 SCC (Cri) 71: AIR 2006 SC 2461: 2006 Cri LJ 3276.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.P. Naolekar**, JJ. [Date of decision: 12-5-2006]

[673] — Ss. 366, 368 and 376 — Sentence — Reduction of, by High Court — Propriety — *Sentence of seven years' RI and fine with default stipulation imposed by the Sessions Court, reduced by the High Court to the period already undergone, the fine having been already paid, on only ground that the accused were illiterate labourers from rural area and were registering their attendance in the Registry of the High Court till 11-7-2003 — Held, it has been repeatedly held, while dealing with similar orders, that grounds of this nature are wholly irrelevant for reducing the sentence for the heinous crime for which the respondents had been convicted — Further held, though the order of conviction passed by the Sessions Court had been confirmed by the High Court but it does not appear that there was any consideration on merits by the High Court — Hence, impugned judgment of the High Court set aside and matter remitted to it for decision afresh — Criminal Trial — Sentence — Reduction of sentence — Deprecation of* (Paras 2, 3 and 4). *State of M.P.* v. *Pooran*, (2006) 10 SCC 300: (2006) 3 SCC (Cri) 543.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *G.P. Mathur*, JJ. [Date of decision: 18-7-2005]

SECTIONS 375 AND 376 — RAPE

Synopsis

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Synopsis *(contd.)*

(i) Gang rape
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(k) Incest by force/coercion
(l) Rape by person in position of authority
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(n) Attempt to rape
(o) Sentence
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(q) Prosecution of a woman for rape

(a) Generally — Meaning and Scope

[674] — S. 376 — Rape — Meaning of, explained — *Legislative intent to curb the offence of rape with an iron hand, taken note of — Words and phrases — "Rape" — Crimes against women and children — Rape*

The offence of rape in its simplest term is "the ravishment of a woman, without her consent, by force, fear or fraud", or as "the carnal knowledge of a woman by force against her will". "Rape or raptus" is when a man hath carnal knowledge of a woman by force and against her will; or, as expressed more fully, "rape is the carnal knowledge of any woman, above the age of particular years, against her will; or of a woman child, under that age, with or against her will". The essential words in an indictment for rape are rapuit and carnaliter cognovit; but carnaliter cognovit, nor any other circumlocution without the word rapuit, are not sufficient in a legal sense to express rape. In the crime of rape, "carnal knowledge" means the penetration to any the slightest degree of the male organ of generation. It is violation, with violence, of the private person of a woman, an outrage by all means. By the very nature of the offence it is an obnoxious act of the highest order. (Para 8)

"Rape" is defined in Section 375 IPC. Sections 375 and 376 IPC have been substantially changed by the Criminal Law (Amendment) Act, 1983, and several new sections were introduced by the new Act i.e. Sections 376-A, 376-B, 376-C and 376-D. The fast sweeping changes introduced reflect the legislative intent to curb with iron hand, the offence of rape which affects the dignity of a woman. (Para 9). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

[675] — S. 376 — Rape — Nature of crime — Considering serious effects and consequences of, held, is a crime against basic human rights — *Is violative of victim's fundamental right under Art. 21 — So court should deal with cases of sexual crime against women sternly and severely*

Sexual violence apart from being a dehumanising act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity-it degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished fundamental right, namely, the right to life contained in Article 21 of the Constitution. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitised judge is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos. (Para 6). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

[676] — S. 376 — Victim of rape, held, is not an accomplice — *Evidence Act, 1872, S. 133*

A woman or a girl who is raped is not an accomplice. Corroboration is not a sine qua non for conviction in a rape case. An accused cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. Judicial response to human rights cannot be blunted by legal jugglery. (Paras 11 and 9). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

[677] — Ss. 376 to 376-D — Sexual offences — Name of the victim — Indication of — *Held, should not be indicated in the judgments of the courts — Crimes against women and children — Disclosure of names of victims*

Section 228-A IPC makes disclosure of the identity of the victim of certain offences punishable. Printing or publishing the name or any matter which may make known the identity of any person against whom an offence under Sections 376, 376-A, 376-B,

376-C or 376-D is alleged or found to have been committed can be punished. True it is, the restriction does not relate to printing or publication of judgment by the High Court or the Supreme Court. But keeping in view the social object of preventing social victimisation or ostracism of the victim of a sexual offence for which Section 228-A has been enacted, it would be appropriate that in the judgments, be it of the Supreme Court, the High Court or lower court, the name of the victim should not be indicated. (Para 7). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

— S. 376(2) proviso *See* INTERPRETATION OF STATUTES — 'Internal aids' — Proviso, (2006) 3 SCC 771

(b) Ingredients of rape

— S. 375 Expln. — Word "penetrate" — Meaning of *See* WORDS AND PHRASES, (2006) 8 SCC 560

[678] — Ss. 376/511, 375 Expln., 366 and 354 — Rape — Basic ingredients of — Penetration of male organ into private parts of victim/prosecutrix, held, is necessary to constitute the said offence — *Slightest penetration with or without any emission of semen or even an attempt at penetration is sufficient — Rupture of hymen is not necessary — Appellant forcibly taking prosecutrix to his gumti with intention of committing illicit intercourse — But, before he could do anything, hearing alarm raised by prosecutrix, the father of prosecutrix and other villagers assembling there and rescuing the prosecutrix — Held, in absence of any attempt to penetrate, conviction under Ss. 376/511 was wholly illegal and unsustainable — However, ingredients of offences under Ss. 366 and 354 IPC being present, appellant held guilty under the said sections — Punished accordingly*

On 18-2-1998, at about 1.30 a.m., when the prosecutrix, aged about 12 years, came out of her house to answer the call of nature, the appellant forcibly took her to his gumti for committing illicit sexual intercourse with her. The said gumti of the appellant was only a few feet away from the house of the prosecutrix. The prosecutrix raised an alarm, and immediately thereafter several persons including the father of the prosecutrix came from the adjoining houses and caught the appellant before he could even make any attempt to ravish the prosecutrix.

The trial court convicted the appellant under Sections 376/511 IPC and sentenced him to seven years' rigorous imprisonment. The appellant preferred an appeal before the High Court, but the same was dismissed. Hence, the present appeal.

Partly allowing the appeal,

Held :

The important ingredient of the offence under Section 375 punishable under Section 376 IPC is penetration which is altogether missing in the instant case. No offence under Section 376 IPC can be made out unless there was penetration to some extent. In the absence of penetration to any extent, it would not bring the offence of the appellant within the four corners of Section 375 of the Penal Code. (Para 10)

Under Section 375 IPC, six categories indicated therein are the basic ingredients of the offence of rape. In view of the Explanation to Section 375, mere penetration of penis in vagina is an offence of rape. Slightest penetration is sufficient for conviction under Section 376 IPC. (Paras 10 and 13)

Therefore, the basic ingredient for proving a charge of rape is the accomplishment of the act with force. The other important ingredient is penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim completely, partially or slightly would be enough for the purpose of Sections 375 and 376 IPC. In order to constitute rape, what Section 375 IPC requires is medical evidence of penetration, and this may occur and the hymen remain intact. In this regard, the position of law in England is the same. There also, where a penetration was proved, but not of such a depth as to injure the hymen, still it was held to be sufficient to constitute the crime of rape. The view has been taken that "proof of the rupture of the hymen is unnecessary". It has been laid down that "it is now unnecessary to prove actual emission of seed; sexual intercourse is deemed complete upon proof of penetration only". (Paras 10, 13, 14 and 21)

In the present case, what to talk about the penetration, there has not been any attempt of penetration to the slightest degree. The appellant had neither undressed himself nor even asked the prosecutrix to undress so there was no question of penetration. In the absence of any attempt to penetrate, the conviction under Sections 376/511 IPC is wholly illegal and unsustainable. (Paras 22 and 58)

However, the offence committed squarely covers the ingredients of Sections 366 and 354 IPC. (Para 36). *Tarkeshwar Sahu* v. *State of Bihar (Now Jharkhand)*, (2006) 8 SCC 560: (2006) 3 SCC (Cri) 556.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

State of Kerala v. Kundumkara Govindan, 1969 Cri LJ 818 1968 Ker LJ 485, approved

(c) 'Against her will' and 'without her consent'

[679] — Ss. 375 Secondly & 90 and 376 — Rape — "Consent" — Value of, when obtained under misconception playing a fraud — *Consent of a girl of tender age (about 16 years) obtained by accused by making a false promise to marry her which he never intended to fulfil — Invoking S. 90 IPC, held, such fraudulent consent cannot be said to be a consent so as to condone the offence of accused — Said consent was of no consequence — Act in question fell in second category as enumerated in S. 375 (sexual intercourse without consent of victim) — Hence, conviction and sentence of accused under S. 376, held, was justified — Words and Phrases — "Consent" — Evidence Act, 1872, S. 114-A*

The prosecutrix after the death of her father was living with her elder sister. During the daytime the prosecutrix used to remain alone. The accused used to come to her sister's house in between 11 a.m. and 12 noon daily. He had been asking the prosecutrix for sexual intercourse with him. The prosecutrix refused to participate in the said act but the accused kept on persisting and persuading her. The prosecutrix resisted for about three months. But one day the accused came to her sister's house at about 12 noon and closed the doors and committed sexual intercourse with her forcibly, without her consent and against her will. When the prosecutrix asked the accused as to why he spoiled her life he gave assurance that he would marry her and asked her not to cry. On the basis of the assurance given by the accused this process of sexual intercourse continued. This state of affairs was not disclosed by the prosecutrix to her sister. When she became pregnant she informed about the pregnancy to the accused. The accused got certain tablets for abortion but they did not work. When the prosecutrix was in the third month of pregnancy, she again insisted for the marriage but the accused answered that his parents were not agreeing. Thereafter, the prosecutrix informed about the said situation to her sister and brother-in-law who asked the accused to marry her. The accused informed that he would not marry the prosecutrix. The said issue was raised before the Panchayat of elders. The accused and his father both attended the Panchayat and the accused admitted his guilt. He asked for two days' time for marrying the prosecutrix and the Panchayat accordingly granted time. But after the Panchayat meeting the accused absconded from the village and when he did not fulfil his promise which was made before the Panchayat, an FIR was lodged against him.

The trial court acquitted the accused, but the High Court convicted him under Sections 376 and 417 IPC. Hence, the present appeals.

Dismissing the appeals,

Held :

A consent obtained by misconception while playing a fraud is not a consent. (Para 10)

In the instant case, the intention of the accused right from the beginning was not bona fide and the poor girl submitted to the lust of the accused, completely being misled by the accused who held out the promise for marriage. This kind of consent taken by the accused with clear intention not to fulfil the promise and persuading the girl to believe that he is going to marry her and obtaining her consent for the sexual intercourse under total misconception, cannot be treated to be a consent. Such fraudulent consent cannot be said to be a consent so as to condone the offence of the accused. (Paras 10 and 17)

If it is a fully grown-up girl who gave the consent then it would have been a different case but a girl whose age is very tender was giving a consent after persuasion of three months on the promise that the accused will marry her which he never intended to fulfil right from the beginning which is apparent from the conduct of the accused, Section 90 can be invoked. The consent of the victim in this case is of no consequence and falls in the second category as enumerated in Section 375 — "without her consent". (Para 10)

Therefore, the conviction and sentence awarded to the appellant is correct and no case is made out for interference. (Para 17). *Yedla Srinivasa Rao* v. *State of A.P.*, (2006) 11 SCC 615: (2007) 1 SCC (Cri) 557.

Bench Strength **2**. Coram: **A.K. Mathur** and *Altamas Kabir*, JJ. [Date of decision: 29-9-2006]

Jayanti Rani Panda v. State of W.B., 1984 Cri LJ 1535 (Cal); Deelip Singh v. State of Bihar, (2005) 1 SCC 88: 2005 SCC (Cri) 253; Uday v. State of Karnataka, (2003) 4 SCC 46: 2003 SCC (Cri) 775, distinguished on facts

[680] — Ss. 376 and 375 Secondly — Rape — Consent of victim to sexual intercourse — Voluntary consent — Question as to — Determination of — *Factors to be considered and approach of court — Held, what is voluntary consent and what is not would depend on facts of each case — Factors like the age of the girl, her education, her social status and likewise the social status of the boy has to be considered — Court should closely scrutinise evidence while taking into consideration the said factors — If attending circumstances lead to conclusion that it was not only the accused but the prosecutrix was also equally keen, then in that case the offence is condoned — Words and Phrases — "Voluntary consent"*

What is a voluntary consent and what is not a voluntary consent depends on the facts of each case. In order to appreciate the testimony, one has to see the factors like the age of the girl, her education and her

status in the society and likewise the social status of the boy. The court of fact while appreciating evidence in such cases should closely scrutinise evidence while taking into consideration the said factors. If the attending circumstances lead to the conclusion that it was not only the accused but the prosecutrix was also equally keen, then in that case the offence is condoned. (Paras 10 and 11). *Yedla Srinivasa Rao* v. *State of A.P.*, (2006) 11 SCC 615: (2007) 1 SCC (Cri) 557.

Bench Strength **2**. Coram: **A.K. Mathur** and *Altamas Kabir*, JJ. [Date of decision: 29-9-2006]

[681] — Ss. 375 and 376 — Rape — Testimony of prosecutrix — Alleged relationship between prosecutrix and accused — Reliability of testimony of prosecutrix in case of — *High Court holding that on evidence showing that there were relations between accused and prosecutrix, it was very difficult to rely upon testimony of prosecutrix and therefor acquitting accused — Unsustainability — Held, the High Court's approach is improper — Trial court has held that alleged relationship between prosecutrix and accused was of no consequence, particularly having regard to manner in which entire incident took place — Matter remanded for fresh consideration to High Court* (Paras 3 and 4). *State of Rajasthan* v. *Bhanwar Singh*, (2006) 6 SCC 9: (2006) 3 SCC (Cri) 9.

Bench Strength **2**. Coram: *S.B. Sinha* and *P.P. Naolekar*, JJ. [Date of decision: 2-5-2006]

(d) Appreciation of evidence

[682] — Ss. 375 and 376 — Rape of minor — Proof and corroboration of — Medical evidence — Consideration of — Rape of a 5 year old girl by the accused aged 22 years — High Court acquitting the accused disbelieving her testimony as well as that of other PWs who had entered the room on hearing her cry — *High Court holding that the statement of the prosecutrix was not corroborated by the evidence of the doctor who examined her as there were no external injuries, there were no bloodstains on her dress, there was no injury on her female organ, hymen was ruptured and there was no fresh bleeding from the private parts — Doctor admitting that she was not in a position to state as to how the hymen of the girl was torn but stating that the male organ would not have penetrated in a young girl's vagina and there was no sign of rape — Held, the finding of the High Court is absolutely perverse and inconsistent with the evidence on record: (i) No opinion could be given by the doctor that there was no sign of rape; (ii) Regarding non-presence of bloodstains on her vaginal part and on her wearing apparel it was the categorical testimony of PWs 1, 8 and 9 that the prosecutrix was given a bath, her vagina and wearing apparel were washed before taking her to the doctor; and (iii) The doctor having recorded that hymen of the vagina was torn was not justified in giving an opinion that the male organ would not have penetrated into the young girl's vagina — Besides, the High Court completely overlooked the testimony of the doctor who examined the accused and found a cut wound at the bottom portion of his penis — He had further opined that such cut wound was possible only when the penis is forced into the vagina — It is unfortunate that this stark testimony against the accused for which he had no explanation, escaped the notice of the High Court — Evidence of the prosecutrix remained unimpeached and was well corroborated by evidence of other PWs — There was not an iota of evidence or even a suggestion that the accused had been falsely implicated because of animosity — Moreover, ocular evidence of PWs is well corroborated by the medical evidence — High Court committed grave miscarriage of justice in recording acquittal by reversing the conviction recorded by the trial court — Impugned order set aside and conviction recorded by the trial court restored — Crimes against women and children — Rape of minors* (Paras 11, 12, 13, 21 and 22). *State of T.N.* v. *Ravi*, (2006) 10 SCC 534: (2007) 1 SCC (Cri) 133: AIR 2006 SC 2568: 2006 Cri LJ 3305.

Bench Strength **2**. Coram: **H.K. Sema** and *A.K. Mathur*, JJ. [Date of decision: 4-7-2006]

[683] — S. 376 — Rape — Evidence of victim — Corroboration of, held, is not a sine qua non for conviction — *Accused cannot cling to a fossil formula and insist on corroborative evidence even if taken as a whole the case spoken to by the victim strikes a judicial mind as probable*

The physical scar may heal up, but the mental scar will always remain. When a woman is ravished, what is inflicted is not merely physical injury but the deep sense of some deathless shame. In the Indian setting, refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracised by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sexual offence is entitled to great

(d) Appreciation of evidence *(contd.)*

weight, notwithstanding the absence of corroboration. (Paras 9 and 11). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

[684] — Ss. 376(2)(e) and 375 — Rape — Conviction for, on facts, if proper — *Appellant-accused alleged to have raped the prosecutrix after felling her to the ground while she, PW 8 and PW 2 were collecting cow dung in a "jungle"/"kokad" (land covered by bushes) — Testimony of prosecutrix and other PWs inspiring confidence — No motive imputed to her to falsely implicate the accused — Simple abrasions found on her person corroborating the version that she was felled to the ground and raped — No possibility that such injuries were self-inflicted, in absence of any evidence therefor and in view of clear and categorical case of the prosecution — Absence of any blood or stains of semen on the clothes of the prosecutrix or the appellant inconsequential as the clothes were seized and examined after four days of the occurrence — Conclusion of the trial court that it was consensual sexual intercourse, unwarranted and based solely on conjectures and suspicion, and hence perverse — Held, High Court was fully justified in setting aside judgment and order of the trial court and convicting the accused — Criminal Procedure Code, 1973, Ss. 378 and 386 — Crimes against women and children — Rape*

Appellant-accused alleged to have raped one *V* (PW 1), a pregnant woman, after felling her to the ground when she had gone to a "jungle"/"kokad" (meaning land covered with bushes) to collect cow dung along with PW 2 and PW 8. The trial court acquitted the appellant finding that: (*i*) It was not possible to commit rape in an open field with a "*rasta*" nearby; (*ii*) No blood or broken bangles were found at the place of occurrence; (*iii*) Medical evidence did not support the prosecution case; (*iv*) Absence of any stains of semen on the clothes of the prosecutrix or the appellant; (*v*) Testimony of PW 2 and PW 8 (eyewitnesses) not inspiring confidence; and (*vi*) It was a consensual sexual course.

The High Court by the impugned judgment reversed the findings of the trial court and held the appellant guilty, and sentenced him to undergo 10 years' rigorous imprisonment and to pay a fine of Rs 1000 with default stipulation. Hence, the present appeal by the appellant-accused.

Dismissing the appeal,

Held :

No interference is called for with the reasoning of the High Court. (Para 5)

The trial court was unduly influenced by the fact that the occurrence took place in an open field and there was a "*rasta*" nearby and hence it was not possible to commit rape at such a location. The finding of the trial court is not supported by any evidence on record because the consistent evidence of the prosecution witnesses is that the place where the occurrence took place was a forest or at least a place where bushes were growing and, therefore, the trial court was not justified in jumping to the conclusion that it was an open field where the offence was committed. (Para 6)

The prosecutrix has fully supported the case of the prosecution. The fact that there was no bleeding or no broken bangles were found at the place of occurrence has been unduly exaggerated by the trial court to disbelieve the witness. There is no good reason to disbelieve the prosecutrix when she has fully supported the case against the appellant. It is not suggested that she had any enmity with the appellant or there was any particular reason for her to involve the appellant in this offence. Some far-fetched disputes were sought to be highlighted, but there is nothing on record to suggest that the prosecutrix or her husband had any motive to falsely implicate the appellant. (Para 7)

Further, the trial court was also impressed by the fact that the medical evidence does not support the case of the prosecution. This is also a finding contrary to the record. Some simple injuries were caused to the prosecutrix when she was felled on the ground and raped. The abrasions found on her person certainly corroborate the case of the prosecution. The fact that abrasions may also be caused by self-infliction is no ground for holding that in this case they were so caused, when there is direct evidence to the effect that she was pushed on the ground and rape was committed. The fact that in his cross-examination the doctor admitted that such injuries may be self-inflicted, is no basis for holding that the injuries were in fact self-inflicted, in the absence of any evidence to prove that. This is particularly so when the case of the prosecution is clear and categorical that the appellant caught the prosecutrix by her neck and felled her on the ground and committed rape. Therefore, the medical evidence does support the case of the prosecution. The absence of any stains of semen on the clothes of the prosecutrix or the appellant is of no consequence in this case since the clothes of the appellant were seized and examined after four days of the occurrence. (Para 8)

The trial court has really not recorded any convincing reason for not accepting the testimonies of PW 2 and PW 8. Their evidence appears to be natural having a ring of truth. Much was sought to be made of minor discrepancies in the evidence of the two eyewitnesses, which have been described as glaring contradictions. Some variation in matters of detail is but natural, and much depends on the capacity of a witness to observe and remember events, particularly in matters of minor details. Moreover, the two witnesses came from two different directions, and they may have observed the incident at different stages, though in quick succession. However, such minor discrepancies do not warrant rejection of their evidence. Their deposition is natural and consistent with the case of the prosecution and there is no reason to disbelieve them. (Para 9)

Lastly, there was no justification for the trial court to have concluded that it was sexual intercourse by consent. This finding is based solely on conjectures and suspicion. The medical evidence discloses that the internal wall of the vagina of the prosecutrix was congested, having reddish colour. In his cross-examination, the doctor did state that this could be caused by sexual intercourse in ordinary course. From this, the trial court jumped to the conclusion that since the prosecutrix, who was pregnant did not abort and gave birth to a normal healthy child after three months, this was a case in which it must be held that the prosecutrix was a consenting party. Such reasoning of the trial court is perverse. (Para 10)

The findings of the trial court are not such as could possibly be reached on the basis of the evidence on record, much less can they be said to be a possible reasonable view of the evidence on record. The High Court was, therefore, fully justified in setting aside the judgment and order of the trial court. (Para 10). *Parbata* v. *State of Rajasthan*, (2005) 13 SCC 398: (2006) 2 SCC (Cri) 252: AIR 2006 SC 747: 2006 Cri LJ 562.

Bench Strength **2**. Coram: *B.P. Singh* and *R.V. Raveendran*, JJ. [Date of decision: 16-11-2005]

(e) Conviction on sole testimony of prosecutrix

[685] — S. 375 — Rape — Evidence — Testimony of prosecutrix — Conviction on the sole basis of — Sustainability

It is now a well-settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital, unless there are compelling reasons which necessitate looking for corroboration of her statement. The courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also a well-settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under the given circumstances. Minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. (Paras 5 and 15 to 20). *State of H.P.* v. *Asha Ram*, (2005) 13 SCC 766: (2006) 2 SCC (Cri) 296: AIR 2006 SC 381: 2006 Cri LJ 139.

Bench Strength **2**. Coram: **H.K. Sema** and *P.P. Naolekar*, JJ. [Date of decision: 17-11-2005]

[686] — Ss. 375, 376 and 366 — Rape — Proof and corroboration of — Testimony of prosecutrix — Conviction on the sole basis of — Permissibility — *Prosecutrix alleging that on the pretext of taking her to the hospital, accused took her to a room inside the hotel and after threatening her, ravished her sexually — Accused though denying the charges not able to explain as to how he had been falsely implicated — Testimony of prosecutrix quite natural, inspiring confidence and meriting acceptance — Held, a clear case of rape, as defined under S. 375 clause thirdly has been established against the accused — Further held, conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence — Children Acts — Bombay Children Act, 1948 (71 of 1948), S. 57 — Criminal Trial — Witnesses — Prosecutrix — Conviction on the basis of sole testimony of* (Para 25). *Vishnu* v. *State of Maharashtra*, (2006) 1 SCC 283: (2006) 1 SCC (Cri) 217: AIR 2006 SC 508: 2006 Cri LJ 303.

Bench Strength **2**. Coram: **H.K. Sema** and *Tarun Chatterjee*, JJ. [Date of decision: 24-11-2005]

[687] — S. 376 — Rape — Proof and corroboration of — Appellant doctor alleged to have raped prosecutrix, a patient visiting his clinic — Sessions Court as well as the High Court convicting the appellant relying on the testimony of prosecutrix — *Held, though in rape cases conviction on the sole testimony of prosecutrix is sustainable (provided it inspires confidence), but in the instant case version given by the prosecutrix is unsupported by medical evidence and the surrounding circumstances belie the case set up by her — There were many persons in the clinic and it is highly improbable that the appellant would have sexually assaulted her when they were present in the near vicinity — It is also highly improbable that the prosecutrix could not make any noise or*

(e) Conviction on sole testimony of prosecutrix *(contd.)*

get out of the room without being assaulted by the doctor as she was an able-bodied person of 20 years of age with ordinary physique — Absence of injuries on the body improbabilise the prosecution version — Moreover, there was absence of spermatozoa in the vaginal swab of the prosecutrix — Presence of semen on the undergarments of the appellant as also on her petticoat and sari not sufficient by itself to prove the offence though may cause some suspicion on the conduct of the appellant — Further, the doctor who examined the appellant on the same day negatived sexual intercourse on the basis of scientific evidence — No injury found on the body or the private parts of the prosecutrix — Doctor who examined her unable to give any opinion about the alleged sexual intercourse — Held, appellant entitled to benefit of doubt — Conviction and sentence set aside — Crimes against women and children — Rape by persons in position of authority

It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen. (Para 9)

In the present case there were so many persons in the clinic and it is highly improbable that the appellant would have made a sexual assault on the patient who came for examination when large number of persons were present in the near vicinity. It is also highly improbable that the prosecutrix could not make any noise or get out of the room without being assaulted by the doctor as she was an able-bodied person of 20 years of age with ordinary physique. The absence of injuries on the body improbabilise the prosecution version. (Para 10)

Besides the absence of spermatozoa in the vaginal swab of the prosecutrix casts a serious doubt on the prosecution evidence. (Paras 7 and 13)

Moreover, the appellant also was medically examined on the same day by PW 10 who stated that smegma was present around the corona glandis. He further deposed that his examination negatived sexual intercourse and for collection of smegma around corona glandis a period of 24 hours is required. This scientific evidence also does not support the prosecution. Had there been a vigorous sexual act as alleged by the prosecutrix there could not have been the presence of smegma on his private part. (Para 8)

It is true that the petticoat [**Ed.**: of the prosecutrix] and the underwear allegedly worn by the appellant had some semen but that by itself is not sufficient to treat that the appellant had sexual intercourse with the prosecutrix. That would only cause some suspicion on the conduct of the appellant but not sufficient to prove the case, as alleged by the prosecution. (Para 12)

On a consideration of the entire evidence in this case, there is a serious doubt regarding the sexual intercourse allegedly committed by the appellant on the prosecutrix. The appellant is entitled to the benefit of doubt. (Para 14). *Sadashiv Ramrao Hadbe* v. *State of Maharashtra*, (2006) 10 SCC 92: (2007) 1 SCC (Cri) 161.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *R.V. Raveendran*, JJ. [Date of decision: 17-1-2006]

[688] — S. 376 — Rape — Testimony of prosecutrix — Reliability — *Crimes against women and children — Rape*

It is settled law that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence including the evidence of a doctor. In a given case even if the doctor who examined the victim does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix. In normal course a victim of sexual assault does not like to disclose such offence even before her family members much less before public or before the police. In the instant case the suggestion given on behalf of the defence that the victim has falsely implicated the accused does not appeal to reasoning. There was no apparent reason for a married woman to falsely implicate the accused after scathing her own prestige and honour. (Para 13)

The courts while dealing with such cases should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestation. If a prosecutrix is an adult and of full understanding the court is entitled to base a con-

viction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence. (Paras 14 and 15)

A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. (Para 15). *Om Prakash* v. *State of U.P.*, (2006) 9 SCC 787: (2006) 3 SCC (Cri) 401: AIR 2006 SC 2214: 2006 Cri LJ 2913.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 11-5-2006]

(f) Medical examination

[689] — S. 376 — Rape — Medical examination after 3 months — Held, cannot be expected to corroborate forcible intercourse — *Crimes against women and children — Rape — Medical examination* (Paras 3 and 8). *Dildar Singh* v. *State of Punjab*, (2006) 10 SCC 531: (2007) 1 SCC (Cri) 129: AIR 2006 SC 3084: 2006 Cri LJ 3914.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 20-7-2006]

[690] — S. 376 — Rape — Evidence — Medical evidence inconsistent with evidence of prosecutrix — Effect — *Prosecutrix aged 8 years at the time of the alleged occurrence — According to evidence of the doctor who examined the prosecutrix immediately after the occurrence, there was no sign of rape — Thus evidence of prosecutrix belied by medical evidence — Held, accused-appellant entitled to acquittal — Crimes against women and children — Rape of minors. Yerumalla Latchaiah* v. *State of A.P.*, (2006) 9 SCC 713: (2006) 3 SCC (Cri) 373.

Bench Strength **3**. Coram: *B.N. Agrawal*, *A.K. Mathur* and *Dalveer Bhandari*, JJ. [Date of decision: 21-2-2006]

(g) Injuries on prosecutrix

[691] — S. 376 — Rape — Proof and corroboration of — Absence of injuries on private parts of prosecutrix — Effect — *Rape of a married woman in the bus by the driver and conductor of the bus, alleged — No reason for the prosecutrix to falsely implicate the accused as they were strangers — Testimony of prosecutrix corroborated by testimonies of two constables (PWs) who were on patrolling duty near the bus stand — PW 1 though declared hostile, part of his testimony corroborating the prosecution version — Though no injuries found on the private parts of the prosecutrix, injuries found on front portion of her body and hands — Held, mere fact that no injuries were found on her private parts, held, cannot be a ground to hold that no rape was committed upon her or that the entire prosecution story is false — Prosecutrix was a married grown-up lady and absence of injuries on her private parts was not of much significance — Appellant rightly convicted under S. 376(2)(g)* (Paras 2, 11 and 13). *Santosh Kumar* v. *State of M.P.*, (2006) 10 SCC 595: (2007) 1 SCC (Cri) 28: AIR 2006 SC 3098: 2006 Cri LJ 4594.

Bench Strength **2**. Coram: **G.P. Mathur** and *R.V. Raveendran*, JJ. [Date of decision: 25-8-2006]

(h) Delay in lodging/filing FIR

See also 'Sentence', below

[692] — Ss. 376, 377, etc. — Delay in lodging FIR — Effect — *Held, delay in lodging the first information report cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same. Dildar Singh* v. *State of Punjab*, (2006) 10 SCC 531: (2007) 1 SCC (Cri) 129: AIR 2006 SC 3084: 2006 Cri LJ 3914.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 20-7-2006]

(i) Gang rape

[693] — S. 376(2)(g) Explanation 1 — Gang rape — Requisites to sustain conviction for

Prosecution must prove:

(*i*) that more than one person had acted in concert with the common intention to commit rape on the victim;

(*ii*) that more that one accused had acted in concert in commission of offence of rape with pre-arranged plan, prior meeting of mind and with element of participation in action. Common intention would be action in concert in pre-arranged plan or a plan formed suddenly at the time of commission of offence which is reflected by the element of participation in action or by inaction when the action would be necessary. The prosecution would be required to prove pre-meeting of minds of the accused persons prior to commission of offence of rape by substantial evidence or by circumstantial evidence; and

(*iii*) that in furtherance of such common intention one or more persons of the group actually committed offence of rape on victim or victims. Prosecution is

(i) Gang rape *(contd.)*

not required to prove actual commission of rape by each and every accused forming the group. (Para 10). *Pardeep Kumar* v. *Union Admn.*, (2006) 10 SCC 608: (2007) 1 SCC (Cri) 41: AIR 2006 SC 2992: 2006 Cri LJ 3894.

Bench Strength **2**. Coram: *B.N. Agrawal* and **P.P. Naolekar**, JJ. [Date of decision: 18-8-2006]

[694] — **S. 376(2)(g) Explanation 1 — Proof of common intention to commit gang rape — Liability of the members** — *Held, actual act of rape by even one individual forming the group, would fasten the guilt on other members, although he or they have not committed rape on the victim or victims — Crimes against women and children — Gang rape* (Para 11). *Pardeep Kumar* v. *Union Admn.*, (2006) 10 SCC 608: (2007) 1 SCC (Cri) 41: AIR 2006 SC 2992: 2006 Cri LJ 3894.

Bench Strength **2**. Coram: *B.N. Agrawal* and **P.P. Naolekar**, JJ. [Date of decision: 18-8-2006]

[695] — **S. 376(2)(g) Explanation 1 — Gang rape — Common intention — Version of the prosecutrix as regards presence of the accused-appellant at the time of occurrence contradictory** — *In the FIR, she stating that he entered the house after rape was committed by other accused and thereafter started consuming liquor, but in her deposition before court she stating that he was present right from the moment she entered the house — Although possibility of the accused-appellant at the place of occurrence cannot be ruled out since he was apprehended from a place nearby along with other accused, held, but mere presence at such place is insufficient to show that there was a prior concert or meeting of minds or plan formed suddenly at the time of commission of offence by the accused-appellant with the other accused persons for the commission of rape on the prosecutrix — Moreover, where specific acts had been attributed to the other accused persons to show their connivance and preconcert to facilitate the offence in a pre-planned manner, no such act or conduct attributed to the accused-appellant in furtherance of the common intention to commit rape — On the other hand, prosecutrix categorically stating before court that the accused-appellant had not defiled her — Held, in such circumstances accused-appellant entitled to benefit of doubt — High Court's impugned order of conviction set aside — Crimes against women and children — Gang rape* (Paras 13 and 14). *Pardeep Kumar* v. *Union Admn.*, (2006) 10 SCC 608: (2007) 1 SCC (Cri) 41: AIR 2006 SC 2992: 2006 Cri LJ 3894.

Bench Strength **2**. Coram: *B.N. Agrawal* and **P.P. Naolekar**, JJ. [Date of decision: 18-8-2006]

(j) Statutory rape — Underage victim (minor)

[696] — **Ss. 375, 376 and 366 — Rape — Age of prosecutrix — Determination of** — *Materials to be relied on — Date of birth as recorded in the birth register of the Municipal Corporation and the register of the hospital where the prosecutrix was born, was 29-11-1964 (in which case the prosecutrix was below sixteen years of age on the date the offence was committed), while the date of birth recorded in the school-leaving certificate was 29-6-1963 (in which case she was above sixteen years on the date the offence was committed) — Submission by accused that since these certificates were capable of two opinions, the one in his favour should be accepted, and since the sexual intercourse was consensual, unless it is established that the prosecutrix was below 16 years of age, he was not liable to be punished in view of definition of "rape" under S. 375 clause sixthly — Held, this submission deserves outright rejection — Date of birth of prosecutrix is no more in controversy in view of the concurrent findings of the trial court and the High Court that it was 29-11-1964, and evidence of her parents which is corroborated by contemporaneous documents produced by the prosecution — In case of determination of birth date, the best evidence is that of parents — Normally, the age recorded in the school certificate is considered to be the correct determination of age, provided the parents furnish correct age of the ward at the time of admission and it is authenticated — But in the instant case, the school-leaving certificate relied on by the accused is not authentic and none had been examined to prove it — Besides, in the cross-examination her father had clarified that the date recorded in school-leaving certificate was incorrect — Very often parents furnish incorrect date of birth to school authorities to make up age in order to secure admission for their children — Moreover, medical opinion of the doctor who conducted ossification test that the prosecutrix was 18-19 years of age not binding as against the ocular evidence — The two unimpeachable documents produced by the prosecution (birth register of the Corporation and register of the hospital where prosecutrix was born), corroborated by statements of her parents in all material particulars, clearly establish that prosecutrix was born on 29-11-1964, and her consent, if any, was immaterial under clause sixthly of S. 375 — Crimes against Women and Children — Rape of minors* (Paras 10, 11, 12, 17, 18, 20 and 22). *Vishnu* v. *State of Maharashtra*, (2006) 1 SCC 283: (2006) 1 SCC (Cri) 217: AIR 2006 SC 508: 2006 Cri LJ 303.

Bench Strength **2**. Coram: **H.K. Sema** and *Tarun Chatterjee*, JJ. [Date of decision: 24-11-2005]

[697] — S. 376 Sixthly — Rape — Age of prosecutrix — Proof — *Entry in school register showing date of birth of prosecutrix to be below 16 years of age at the time of the occurrence — Held, such entry admissible in evidence — It may not be conclusive but has evidentiary value — On facts, as the same was amply corroborated by oral testimony of Headmaster and a teacher of the school, and father of the prosecutrix, prosecution proved its case — Hence defence that accused had sexual intercourse with consent of prosecutrix was of no consequence — Trial court rightly convicted accused-respondent under S. 376 — Age — Proof of — Crimes against women and children — Statutory rape*

The respondent was working in the house of the father of the prosecutrix. The prosecutrix was married in 1985. After performance of gauna ceremony she came back to her parents' place from her in-laws' house. The respondent was alleged to have induced her to leave the village along with him in the night intervening between February 25 and 26, 1986. A first information report was lodged. On demand of proof of age of the prosecutrix by the officer in-charge of the police station, the father of the prosecutrix filed a certificate as per school register. Before the trial court prosecution adduced evidence showing that as on 25-2-1986, the prosecutrix was a minor. The Headmaster of the Primary Govt. School stated on oath that while taking admission, her mother disclosed about the date of birth on the basis of which the same was recorded in the school register as 25-12-1970. The Assistant Teacher of the school proved that the entries in the school register relating to the date of birth of the prosecutrix had been written by him as certified by her mother. According to the father of the prosecutrix his eldest daughter was born in 1966 and the second daughter was born in 1968 and the prosecutrix was born on 25-12-1970. The prosecutrix admitted that she was the third child of her parents and two of her sisters are elder to her. The trial court found that the entry in the school register showing the date of birth of the prosecutrix to be 25-12-1970 was proved and as such on the date of occurrence she was a minor. The trial court proceeded on the basis that having regard to the age of the prosecutrix the stand of the defence that the accused had sexual intercourse with her with consent was of little importance. It opined that the respondent having not disputed that he had sexual intercourse with the prosecutrix, the charge of rape under Section 376 IPC was proved. However, taking a lenient view of the matter, the respondent was sentenced to undergo 3 years' rigorous imprisonment. In appeal, the High Court reversed the judgment of the trial court on the premise that entries made in a school register was not conclusive evidence as regards the date of birth of the prosecutrix. The sole question before the Supreme Court was whether the State brought enough materials to prove that the prosecutrix was a minor as on the date of the occurrence.

Allowing the State's appeal

Held :

A register maintained in a school is admissible in evidence to prove date of birth of the person concerned in terms of Section 35 of the Evidence Act. Such dates of births are recorded in the school register by the authorities in discharge of their public duty. It may be true that an entry in the school register is not conclusive but it has evidentiary value. Such evidentiary value of a school register is corroborated by oral evidence in this case as the same was recorded on the basis of the statement of the mother of the prosecutrix. (Paras 12 and 13)

Only because the father of the prosecutrix could not state about the date of birth of his other children, the same, by itself, would not mean that he had been deposing falsely. He, in answer to the queries made by the counsel for the parties, categorically stated about the year in which his other children were born. His statement in this behalf appears to be consistent and if the said statements were corroborative of the entries made in the register in the school, there was no reason as to why the High Court should have disbelieved the same. (Para 14)

The prosecutrix took admission in the year 1977. She was, therefore, about 6-7 years old at that time. She was admitted in Class I. Even by the village standard, she took admission in the school a bit late. She was married in the year 1985 when she was evidently a minor. She stayed in her in-laws' place for some time and after the "*gauna*" ceremony, she came back. The materials on record as regards the age of the prosecutrix were, therefore, required to be considered in the aforementioned backdrop. (Para 13)

It must, therefore, be held that the High Court committed a serious error in passing the impugned judgment. It cannot, therefore, be sustained. It is set aside accordingly. (Para 14). *State of Chhattisgarh* v. *Lekhram*, (2006) 5 SCC 736: (2006) 3 SCC (Cri) 66: AIR 2006 SC 1746: 2006 Cri LJ 2139.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-4-2006]

(k) Incest by force/coercion

[698] — Ss. 375 and 376 — Father charged for raping his own daughter — High Court reversing the order of conviction passed by the trial court and acquitting the accused — Propriety — *Testimony of prosecutrix PW 1, in spite of being subjected to lengthy cross-examination remaining unimpeached*

(k) Incest by force/coercion *(contd.)*

— Suggestion that false case had been hoisted against the accused at the instance of her mother (who had strained relations with the father and was residing separately), and that she was having menstruation at that time, denied by her — Testimony of prosecutrix well corroborated by testimony of PW 2 (sister) and PW 3 (mother) and also the medical evidence on record — Held, High Court erred in law as well as on facts, and thereby committed grave miscarriage of justice in acquitting the accused — Despite strained relations between the parents, PWs 1 and 2 were happily staying with the accused and there was no rhyme or reason as to why the daughter should depose falsely so as to expose her honour and dignity and also expose the whole family, risking the outcasting or ostracisation and condemnation by the family circle as well as by society — Hence, impugned order of High Court set aside and that of trial court restored — Supreme Court expressing displeasure and dismay at the way High Court had dealt with such a grave offence

The testimony of PW 1, the prosecutrix, is well corroborated by the testimony of PW 2 and PW 3, corroborated by the medical evidence of PWs 4, 5, 11 and 12, which inspires confidence and the trial court has rightly convicted the respondent-accused under Section 376 IPC. The High Court has erred in law as well as on facts and thereby committed grave miscarriage of justice in acquitting the respondent by reversing the conviction of the respondent recorded by the trial court. The impugned order of the High Court is, accordingly, set aside and the order of the trial court convicting the accused is restored. (Paras 13 and 21)

Contention that because of the strained relationship between PW 3 mother of the prosecutrix and the accused, the prosecution case has been foisted against the accused at the instigation of the mother deserves outright rejection. From the evidence it is clearly established that PWs 1 and 2 despite strained relationship between their mother and father were happily staying with the accused and there is no rhyme or reason as to why the daughter should depose falsely so as to expose her honour and dignity and also expose the whole family to society risking the outcasting or ostracisation and condemnation by the family circle as well as by society. No girl of self-respect and dignity who is conscious of her chastity having expectations of married life and livelihood would accuse falsely any person of rape, much less her father, sacrificing thereby her chastity. It is unthinkable to suggest that the mother would go to the extent of inventing a story of sexual assault of her own daughter and tutor her to narrate a story of sexual assault against a person who is no other than her husband and father of the girl, at the risk of bringing down their social status and spoiling their reputation in the society as well as family circle to which they belong to. (Para 14)

[The Supreme Court while expressing displeasure and dismay at the way the High Court had casually dealt with such a grave offence, overlooking the alarming and shocking increase of sexual assault on minor girls observed that the High Court was swayed by the sheer insensitivity, totally oblivious of the growing menace of sexual violence against minors much less by the father and while doing so totally overlooked the prosecution evidence, which inspired confidence and merited acceptance.] (Para 5). *State of H.P.* v. *Asha Ram*, (2005) 13 SCC 766: (2006) 2 SCC (Cri) 296: AIR 2006 SC 381: 2006 Cri LJ 139.

Bench Strength **2**. Coram: **H.K. Sema** and *P.P. Naolekar*, JJ. [Date of decision: 17-11-2005]

[**Ed.**: A news report appearing on the internet website Indlaw News Detail dated December 15, 2005 says:

"The Supreme Court today decided to re-examine its judgment convicting and sentencing a man to life imprisonment for raping his daughter who retracted her allegations after the pronouncement of the verdict on November 17".

It is to be seen in the future what the outcome is of the review petition.]

(l) Rape by person in position of authority

[699] — S. 376 — Rape of a minor student by the teacher, twice — *Prosecutrix divulging about it only when her mother came to know that she was pregnant i.e. after more than 3 months of occurrence — Held, her not informing anyone about the incident in the circumstances cannot detract from her reliability — Moreover, defence put forth by the appellant was too vague to be acceptable — Conviction upheld — Crimes against women and children — Rape by persons in position of authority* (Paras 3, 6 and 7). *Dildar Singh* v. *State of Punjab*, (2006) 10 SCC 531: (2007) 1 SCC (Cri) 129: AIR 2006 SC 3084: 2006 Cri LJ 3914.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 20-7-2006]

(m) Rape of a pregnant woman

[700] — S. 376(2)(e) — Rape of a pregnant woman — "knowing her to be pregnant" — Meaning and scope — *Held, for attracting the stringent punishment, prosecution besides establishing that the victim was pregnant must further establish that the accused knew the victim to be pregnant — In the instant case no such evidence was led — However, trial court concluding that there was "full possibility" of the accused knowing it — Held, there is a gulf of difference between possibility and certainty — Mere possibility of knowledge is not sufficient — When a case relates to one where because of the serious*

nature of the offence, as statutorily prescribed, more stringent sentence is provided, it must be established and not a possibility is to be inferred — Positive evidence is to be adduced about the accused "knowing her to be pregnant" — In the absence of any material brought on record to show that the accused knew the victim to be pregnant S. 376(2)(e) cannot be pressed into service — Accused convicted under S. 376(1) and sentenced to 7 years' imprisonment — Crimes against women and children — Rape of pregnant woman (Para 17). *Om Prakash* v. *State of U.P.*, (2006) 9 SCC 787: (2006) 3 SCC (Cri) 401: AIR 2006 SC 2214: 2006 Cri LJ 2913.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 11-5-2006]

(n) Attempt to rape

[701] — Ss. 376/511 & 354 — Offence of attempt to commit rape and to commit indecent assault — Point of distinction between

The point of distinction between an offence of attempt to commit rape and to commit indecent assault is that there should be some action on the part of the accused which would show that he is just going to have sexual connection with the prosecutrix. (Para 17). *Tarkeshwar Sahu* v. *State of Bihar (Now Jharkhand)*, (2006) 8 SCC 560: (2006) 3 SCC (Cri) 556.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

(o) Sentence

[702] — S. 376 — Rape — Sentencing — Quantum of sentence — Relevant factors to be considered — Leniency in sentence — Plea as to — Sustainability *— Held, sentence must depend upon the conduct of the accused, the state and age of the victim and the gravity of the criminal act — Socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations — Crimes of violence upon women need to be severely dealt with — Object of law to protect the society and deter the criminal to be achieved by imposing an appropriate sentence — Court to impose proper sentence commensurate with gravity of crime — In the present case of rape of a minor there are no extenuating or mitigating circumstances available on the record which may justify imposition of any sentence less than the prescribed minimum — Hence, plea for leniency, held, was wholly misplaced — Jurisprudence — Object of law — Crimes against women and children — Rape*

The measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. The socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The courts must hear the loud cry for justice by society in cases of the heinous crime of rape on innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court. There are no extenuating or mitigating circumstances available on the record which may justify imposition of any sentence less than the prescribed minimum on the respondent. To show mercy in the case of such a heinous crime would be a travesty of justice and the plea for leniency is wholly misplaced. (Para 12). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

[703] — Ss. 376(1) & (2) provisos — Award of sentence below the statutory minimum — Need for recording "adequate and special reasons" — Nature of the requirement — "Adequate and special reasons" — What are *— Held, said requirement of law is cumulative in that the reasons must not only be adequate but also special — What is adequate and special would depend upon several factors and no straitjacket formula can be laid down — If court does not mention such reasons in the judgment there is no scope for awarding a sentence lesser than the prescribed minimum — In present case accused convicted of raping six-year-old girl, under S. 376(2)(f) — Held, reasons given by High Court for reducing sentence from statutory minimum of 10 years' RI to five years' RI, that accused was of young age and belonged to a Scheduled Tribe, can by no stretch of imagination be considered adequate or special — Sentence imposed by trial court of 10 years' RI, restored — Approach of High Court deprecated — Crimes against women and children — Rape*

A six-year-old child was subjected to sexual abuse by the respondent. The trial court found the respondent guilty of the offence punishable under Section 372(2)(*f*) IPC. The respondent was sentenced to undergo 10 years' RI with a fine of Rs 500 with default

(o) Sentence *(contd.)*

stipulation. In the appeal filed before the High Court the accused did not question the conviction, but prayed for reduction in sentence. The High Court reduced the sentence for the offence punishable under Section 376(2)(*f*) IPC to 5 years, while maintaining the sentence in respect of other offences. The only ground indicated by the High Court to reduce the sentence was the young age of the accused and he being a member of the Scheduled Tribe.

The questions that arose before the Supreme Court were the proper sentence and acceptability of reasons which weighed with the High Court for reducing the sentence.

Allowing the appeal and restoring the minimum mandatory statutory sentence imposed by the trial court, the Supreme Court

Held :

Both, in cases of sub-sections (1) and (2) of Section 376 the court has the discretion to impose a sentence of imprisonment less than the prescribed minimum for "adequate and special reasons". If the court does not mention such reasons in the judgment there is no scope for awarding a sentence lesser than the prescribed minimum. In order to exercise the discretion of reducing the sentence, the statutory requirement is that the court has to record "adequate and special reasons" in the judgment and not fanciful reasons which would permit the court to impose a sentence less than the prescribed minimum. The reason has not only to be adequate but also special. What is adequate and special would depend upon several factors and no straitjacket formula can be indicated. (Paras 17 and 18)

What is applicable to the trial courts regarding recording reasons for a departure from minimum sentence is equally applicable to the High Court. The only reason indicated by the High Court in the present case is the young age of the accused and the fact that he belongs to a Scheduled Tribe. The same can by no stretch of imagination be considered either adequate or special. The requirement in law is cumulative. (Para 18)

It is to be noted that the victim in the instant case is a child who was about 6 years of age at the time of commission of offence. Section 376(2) IPC provides for a more stringent punishment when the victim is under 12 years of age. In the instant case, the High Court was clearly in error in reducing the sentence without recording any adequate and special reason in imposing a lesser sentence. (Paras 19 and 20). *State of M.P.* v. *Santosh Kumar*, (2006) 6 SCC 1: (2006) 3 SCC (Cri) 1: AIR 2006 SC 2648.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 14-7-2006]

Mahesh v. State of M.P., (1987) 3 SCC 80: 1987 SCC (Cri) 379; Sevaka Perumal v. State of T.N., (1991) 3 SCC 471: 1991 SCC (Cri) 724; Dennis Councle McGautha v. State of California, 402 US 183: 28 L Ed 2d 711 (1971); Jashubha Bharatsinh Gohil v. State of Gujarat, (1994) 4 SCC 353: 1994 SCC (Cri) 1193; Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220: 1994 SCC (Cri) 358; Ravji v. State of Rajasthan, (1996) 2 SCC 175: 1996 SCC (Cri) 225; State of M.P. v. Babbu Barkare, (2005) 5 SCC 413: 2005 SCC (Cri) 1335, followed

[**Ed.**: See also *State of M.P.* v. *Bala*, (2005) 8 SCC 1 and the string of cases reported after it.]

[704] — Ss. 376(1) & (2) provisos — Reduction of sentence below the statutory minimum — Need for recording "adequate and special reasons" — Applicability to High Court — *Held, what is applicable to trial courts regarding recording of reasons for a departure from minimum statutory sentence is equally applicable to High Court in reducing the sentence in appeal — Criminal Procedure Code, 1973, Ss. 374(2) and 386*

What is applicable to the trial courts regarding recording reasons for a departure from minimum sentence is equally applicable to the High Court. The only reason indicated by the High Court in the present case is the young age of the accused and the fact that he belongs to a Scheduled Tribe. The same can by no stretch of imagination be considered either adequate or special. The requirement in law is cumulative. (Para 18). *State of M.P.* v. *Santosh Kumar*, (2006) 6 SCC 1: (2006) 3 SCC (Cri) 1: AIR 2006 SC 2648.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 14-7-2006]

[705] — Ss. 376(1) & (2) provisos — Reduction of sentence below the statutory minimum prescribed — Need for recording "adequate and special reasons" — "Adequate and special reasons" — What are — *In present case accused convicted of gang rape under S. 376(2)(g) — High Court without disturbing conviction reducing sentence to the period already undergone, on grounds that accused had been in custody for long, and were semi-literate agricultural labourers from rural areas — Held, none of the grounds adduced by High Court, taken separately or cumulatively are "adequate and special reasons" for reducing sentence below statutory minimum — This is not a situation where High Court could have reduced the minimum sentence — This is a case of unwarranted sympathy — Sentence of ten years' RI imposed by trial court, restored — Approach of High Court deprecated. State of M.P.* v. *Jaleel Khan*, (2006) 6 SCC 18: (2006) 3 SCC (Cri) 15.

Bench Strength **2**. Coram: *B.N. Srikrishna* and *Tarun Chatterjee*, JJ. [Date of decision: 31-3-2006]

[**Ed.**: See also *State of M.P.* v. *Santosh Kumar*, (2006) 6 SCC 1 and *State of M.P.* v. *Bala*, (2005) 8 SCC 1 and the string of cases reported after it.]

[706] — S. 376(1) and proviso thereto — Rape — Mandatory minimum sentence of seven years' RI — Reduction of — When warranted — "Adequate and special reasons" — What are — Marriage and leading of married life by prosecutrix subsequently — *Prosecutrix abducted by appellant-accused and then raped — Prosecutrix rescued from accused after twenty days — Sessions Judge convicting accused under S. 376 IPC to minimum sentence of RI for seven years and under S. 366 IPC to RI for five years — High Court on appeal holding that merely on consideration of age of appellant, reduction of the sentence was not warranted — Supreme Court on examination of evidence holding that sufficient evidence was tendered by prosecution to prove guilt of accused — However, since prosecutrix had since been married and was living with her husband, held, having regard to the peculiar facts and circumstances of the case, the sentence imposed by the courts below is on the highside — Sentence reduced to three years. Ram Kumar* v. *State of Haryana*, (2006) 4 SCC 347: (2006) 2 SCC (Cri) 308.

Bench Strength **2**. Coram: *Dr. Ar. Lakshmanan* and *D.K. Jain*, JJ. [Date of decision: 19-4-2006]

[**Ed.**: *See also* (2005) 8 SCC 1 and the cases following it.]

[707] — S. 376(1) proviso — Reduction of sentence below the statutory minimum — Permissibility — Adequate and special reasons — What are — Infirmities/lacunae in prosecution's case — *Supreme Court while upholding conviction (leave granted by Supreme Court only on question of sentence) under S. 376, reducing minimum statutory sentence of seven years' RI imposed by trial court and affirmed by High Court, to period of imprisonment already undergone, of about three and a half years — Held, since there was delay of three days in lodging the FIR and doctor who examined victim did not find any confirmatory evidence of rape on victim, in the peculiar facts and circumstances of the case, sentence of imprisonment awarded should be reduced to period already undergone. Raj Kumar* v. *State of Bihar*, (2006) 9 SCC 589: (2006) 3 SCC (Cri) 112.

Bench Strength **2**. Coram: *Ashok Bhan* and *Tarun Chatterjee*, JJ. [Date of decision: 30-1-2006]

[**Ed.**: See also *State of M.P.* v. *Santosh Kumar*, (2006) 6 SCC 1 and *State of M.P.* v. *Bala*, (2005) 8 SCC 1 and the string of cases reported after it.]

[708] — Ss. 376(2) proviso & 376(2)(f) — Applicability of proviso to S. 376(2) — Rape on child below 12 years of age — Imposition of sentence below the prescribed minimum of 10 years — Impermissibility — *Held, normal sentence in such case is not less than 10 years — Courts are obliged to respect the legislative mandate in this regard — Recourse to the aforesaid proviso can be had only for "special and adequate reasons" and not in a casual manner — Whether there exist any "special and adequate reasons" would depend upon a variety of factors and the peculiar facts and circumstances of each case — No hard-and-fast rule of universal application can be laid down in this respect*

The legislative mandate to impose a sentence, for the offence of rape on a girl under 12 years of age, for a term which shall not be less than 10 years, but which may extend to life and also to fine reflects the intent of stringency in sentence. The proviso to Section 376(2) IPC, of course, lays down that the court may, for adequate and special reasons to be mentioned in the judgment, impose sentence of imprisonment of either description for a term of less than 10 years. Thus, the normal sentence in a case where rape is committed on a child below 12 years of age, is not less than 10 years' RI, though in exceptional cases "for special and adequate reasons" sentence of less than 10 years' RI can also be awarded. It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso particularly in such like penal provisions. The courts are obliged to respect the legislative mandate in the matter of awarding of sentence in all such cases. Recourse to the proviso can be had only for "special and adequate reasons" and not in a casual manner. Whether there exist any "special and adequate reasons" would depend upon a variety of factors and the peculiar facts and circumstances of each case. No hard and fast rule can be laid down in that behalf of universal application. (Para 13). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

[**Ed.**: See also *State of M.P.* v. *Bala*, (2005) 8 SCC 1, *State of M.P.* v. *Makhmal Khan*, (2005) 8 SCC 8, *State of M.P.* v. *Sheshrao*, (2005) 8 SCC 11(1); *State of M.P.* v. *Rajesh*, (2005) 8 SCC 11(2); *State of M.P.* v. *Veerendra Singh*, (2005) 8 SCC 11(3); *State of M.P.* v. *Dayanand Dohar*, (2005) 8 SCC 12(1); *State of M.P.* v. *Gauri Shankar*, (2005) 8 SCC 12(2); *State of M.P.* v. *Govind*, (2005) 8 SCC 12(3); *State of M.P.* v. *Parasram*, (2005) 8 SCC 13(1); *State of M.P.* v. *Mahesh Bhoomia*, (2005) 8 SCC 13(2); *State of M.P.* v. *Mulli*, (2005) 8 SCC 13(3); *State of M.P.* v. *Rakesh*, (2005) 8 SCC 13(4); *State of M.P.* v. *Killu*, (2005) 8 SCC 14(1); *State of M.P.* v. *Vilru*, (2005) 8 SCC 14(2).]

[709] — S. 376 — Reduction of sentence below statutory minimum prescribed under — Permissibility — *Supreme Court while upholding conviction under S. 376 reducing minimum statutory sentence of seven years' RI imposed by trial court and affirmed by High Court, to period of imprisonment*

(o) Sentence *(contd.)*

already undergone, of about four years — Held, in the facts and circumstances of the case, this is a fit case where sentence of imprisonment awarded should be reduced to period already undergone. Ravinder v. *State of M.P.*, (2006) 9 SCC 590: (2006) 3 SCC (Cri) 349.

Bench Strength **2**. Coram: *B.N. Agrawal* and *D.K. Jain*, JJ. [Date of decision: 27-4-2006]

[**Ed.**: See also *State of M.P.* v. *Santosh Kumar*, (2006) 6 SCC 1 and *State of M.P.* v. *Bala*, (2005) 8 SCC 1 and the string of cases reported after it.]

[710] — **S. 376 proviso — Sentence — Mitigating factors — Adequate and special reasons — Prosecutrix a consenting party** — *Having regard to this and other facts and circumstances, accused directed to be sentenced to the period already undergone by him in the interest of justice*

As regards the quantum of sentence, the question which arises for consideration is whether a case has been made out to invoke the proviso appended to Section 376 of the Penal Code. The trial court did so. (Para 15)

The prosecutrix was a mature girl. She was married. She spent a few months in her in-laws' place. The respondent was working in her house. They, thus, knew each other for a long time. The prosecution evidently could not prove its case that she was enticed away from the custody of her guardian by the respondent on a false plea that he would marry her. She denied the said suggestion as presumably she was aware that she being married, the question of her marrying the respondent again may not arise. She lived for some time with the respondent in a rented house. Both the courts proceeded on the basis that she was a consenting party. The occurrence took place in the year 1986. The respondent preferred an appeal before the High Court in the year 1987. The same remained pending for about 10 years. The special leave petition was filed by the State 230 days after the prescribed period of limitation for preferring such appeal. The delay in filing the special leave petition, however, was condoned. He is said to have remained in custody for about one-and-a-half years. In the peculiar facts and circumstances of this case and having regard to the fact that both the courts have arrived at the conclusion that she was a consenting party, it may not be proper to send the appellant back to prison. (Para 16)

Therefore, while setting aside the judgment of the High Court and affirming that of the trial court, it must be held that the interest of justice would be met if the respondent is directed to be sentenced to the period already undergone by him. (Para 17). *State of Chhattisgarh* v. *Lekhram*, (2006) 5 SCC 736: (2006) 3 SCC (Cri) 66: AIR 2006 SC 1746: 2006 Cri LJ 2139.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-4-2006]

[711] — **S. 376 — Reduction of sentence below statutory minimum prescribed under, without giving of "adequate and special reasons" — Impermissibility** — *High Court while upholding conviction under S. 376, reducing minimum statutory sentence of seven years' RI imposed by trial court to period already undergone, of one year and five months — Impermissibility — Held, Single Judge by cryptic order has reduced the sentence to period already undergone — This order is against the statute, where under S. 376 minimum punishment prescribed is not less than seven years — Matter remanded to High Court for fresh consideration. State of M.P.* v. *Nandu*, (2006) 9 SCC 573: (2006) 3 SCC (Cri) 111.

Bench Strength **2**. Coram: *H.K. Sema* and *R.V. Raveendran*, JJ. [Date of decision: 12-5-2006]

[**Ed.**: See also *State of M.P.* v. *Bala*, (2005) 8 SCC 1 and the string of cases reported after it.]

[712] — **S. 376/S. 354 — Rape alleged for the first time after eleven days of the occurrence for which no explanation put forth — Effect** — *Where on the basis of the FIR and the facts as alleged and proved only offence under S. 354 made out, conviction of appellant under S. 376 unsustainable — Sentence of imprisonment for period already undergone i.e. 13 months would serve the ends of justice* (Paras 3 and 4). *Tejpal* v. *State of M.P.*, (2006) 9 SCC 762: (2006) 3 SCC (Cri) 398.

Bench Strength **3**. Coram: *B.N. Agrawal*, *A.K. Mathur* and *Dalveer Bhandari*, JJ. [Date of decision: 21-2-2006]

[713] — **S. 376 — Sentence — Father raping his own daughter** — *Trial court on conviction sentencing accused to 5 years' RI and fine of Rs 1000 with default stipulation — Held, ordinarily offence of rape is grave in nature, more so, when perpetrator of the crime is the father against his own daughter and the rarest of the rare case which warrants strong deterrent judicial hand — Hence, while maintaining conviction, sentence of life imprisonment and fine of Rs 25,000 (on realisation to be paid to prosecutrix) imposed*

The trial court on conviction sentenced the respondent to 5 years' rigorous imprisonment and a fine of Rs 1000 and in default rigorous imprisonment for 3 months. In the instant case the crime committed by the respondent not only delicts the law but it has a deleterious effect on civilised society. Gravity of the crime has to be necessarily assessed from the nature of the crime. A crime may be grave but the nature of the crime may not be so grave. Similarly, a crime may not be so grave but the nature of the crime may be very grave. Ordinarily, the offence of rape is grave by its

nature. More so, when the perpetrator of the crime is the father against his own daughter it is more graver and the rarest of rare case, which warrants a strong deterrent judicial hand. Hence, while maintaining conviction recorded by trial court, sentence of imprisonment for life and fine of Rs 25,000 is imposed. The fine amount if realised shall be paid to the prosecutrix. (Paras 22 and 24). *State of H.P.* v. *Asha Ram*, (2005) 13 SCC 766: (2006) 2 SCC (Cri) 296: AIR 2006 SC 381: 2006 Cri LJ 139.

Bench Strength **2**. Coram: **H.K. Sema** and *P.P. Naolekar*, JJ. [Date of decision: 17-11-2005]

Madan Gopal Kakkad v. Naval Dubey, (1992) 3 SCC 204: 1992 SCC (Cri) 598, followed

[**Ed.**: A news report appearing on the internet website Indlaw News Detail dated December 15, 2005 says:

"The Supreme Court today decided to re-examine its judgment convicting and sentencing a man to life imprisonment for raping his daughter who retracted her allegations after the pronouncement of the verdict on November 17".

It is to be seen in the future what the outcome is of the review petition.]

[714] — S. 376(2)(f) — Sentence — Rape on child below 12 years of age — Life sentence — Plea as to imposition of — *Held, for said offence the statutorily provided minimum sentence is 10 years and life imprisonment can be awarded in a given case considering the attendant circumstances — In the present case, neither trial court nor High Court indicated any such circumstance/factor — Hence, sentence reduced from life imprisonment to 10 years — Crimes against women and children — Rape of minors*

Sexual violence apart from being a dehumanising act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity-it degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished fundamental right, namely, the right to life contained in Article 21 of the Constitution. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitised judge is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos. (Para 6). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

(p) Compensation to rape victim

— S. 376(2)(f) *See* CRIMINAL PROCEDURE CODE, 1973, S. 357, (2006) 3 SCC 771

(q) Prosecution of a woman for rape

[715] — Ss. 375, 376(2)(g) & Expln. I, 34 and 110 — Gang rape — Prosecution of a woman for — Gang rape and abetment of rape — Distinction — *Held, under the definition of rape under Ss. 375 and 376 a woman cannot be prosecuted for gang rape even if she facilitates the act of rape — By virtue of S. 376(2) Expln. I a woman cannot be convicted for rape — This is conceptually inconceivable since as per the definition of rape in Ss. 375 and 376, rape can be committed only by a man — Expression "in furtherance of their common intention" in S. 376(2) Expln. I relates to the intention to commit rape — A woman cannot be said to have an intention to commit rape — However, question whether appellant-accused, a woman, could be prosecuted for abetment of rape, left open for courts below to decide*

A complaint was lodged by the prosecutrix alleging that she was returning by Utkal Express after attending a sports meet. When she reached her destination at Sagar, the accused, Bhanu Pratap Patel (husband of the accused-appellant) met her at the railway station and told her that her father had asked him to pick her up from the railway station. Since the prosecutrix was suffering from fever, she accompanied accused Bhanu Pratap Patel to his house. He committed rape on her. When commission of rape was going on, the wife of the accused, the present appellant reached there. The prosecutrix requested the appellant to save her. Instead of saving her, the appellant slapped her, closed the door of the house and left the place of incident. On the basis of the complaint lodged, investigation was undertaken and charge-sheet was filed. While the accused Bhanu Pratap Patel was charged for offences punishable under Sections 323 and 376 IPC, the appellant was charged for commission of offences punishable under Sections 323 and 376(2)(*g*) IPC. The revision filed before the High Court questioned the legality of the charge framed so far as the appellant was concerned, relatable to Section 376(2)(*g*) IPC. It was contended that a woman cannot be charged for commission of the offence of rape. The High Court was of the view that though a woman cannot commit rape, but if a woman facilitates the act of rape, Explanation I to

(q) Prosecution of a woman for rape *(contd.)*

Section 376(2) comes into operation and she can be prosecuted for "gang rape". (Para 4)

Negating the view of the High Court and allowing the appeal in the terms below

Held :

A bare reading of Section 375 makes the position clear that rape can be committed only by a man. The section itself provides as to when a man can be said to have committed rape. Section 376(2) makes certain categories of serious cases of rape as enumerated therein attract more severe punishment. One of them relates to "gang rape". The language of Section 376(2)(*g*) provides that whoever commits "gang rape" shall be punished, etc. The Explanation only clarifies that when a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each such person shall be deemed to have committed gang rape within Section 376(2). That cannot make a woman guilty of committing rape. This is conceptually inconceivable. By operation of the deeming provision in the Explanation, a person who has not actually committed rape is deemed to have committed rape even if only one of the group in furtherance of the common intention has committed rape. The expression "in furtherance of their common intention" as appearing in the Explanation to Section 376(2) relates to the intention to commit rape. A woman cannot be said to have an intention to commit rape. Therefore, the appellant wife cannot be prosecuted for alleged commission of the offence punishable under Section 376(2)(*g*). (Para 8)

The residual question is whether the appellant wife can be charged for abetment. This is an aspect which has not been dealt with by the trial court or the High Court. If in law, it is permissible and the facts warrant such a course to be adopted, it is for the court concerned to act in accordance with law. (Para 9). *Priya Patel* v. *State of M.P.*, (2006) 6 SCC 263: (2006) 3 SCC (Cri) 96: AIR 2006 SC 2639: (2006) 130 DLT 696: (2006) 3 KLT 398: (2006) 3 Guj LH 118.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-7-2006]

[716] — Ss. 375 and 376 — Rape — Prosecution of a woman for — *Held, as per the definition of rape in Ss. 375 and 376, rape can be committed only by a man*

A bare reading of Section 375 makes the position clear that rape can be committed only by a man. *Priya Patel* v. *State of M.P.*, (2006) 6 SCC 263: (2006) 3 SCC (Cri) 96: AIR 2006 SC 2639: (2006) 130 DLT 696: (2006) 3 KLT 398: (2006) 3 Guj LH 118.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-7-2006]

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[717] — S. 378 — Theft — When occurs — *Unless property is in possession of any person other than the accused, question of theft does not arise*

The averments in the complaint clearly show that neither the aircrafts nor their engines were ever in the possession of IOC. It is admitted that they were in the possession of NEPC India at all relevant times. The question of NEPC committing theft of something in its own possession does not arise. (Para 19). *Indian Oil Corpn.* v. *NEPC India Ltd.*, (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188: AIR 2006 SC 2780: (2006) 2 Guj LH 753.

Bench Strength **2**. Coram: *H.K. Sema* and **R.V. Raveendran**, JJ. [Date of decision: 20-7-2006]

— Ss. 378, 403, 405, 415 and 425 *See* CRIMINAL PROCEDURE CODE, 1973, S. 482, (2006) 6 SCC 736

[718] — Ss. 392, 394 and 397 — Snatching of Rs 62,000 alleged — Case of planting by police and false implication — When tenable — *However, recovery of only Rs 15,000 from the bag carried by the accused — No explanation by the prosecution as to whereabouts of the remaining Rs 47,000 — Hence, contention by accused that it was implanted by the police for false implication — Held, in absence of any allegation of previous enmity between the complainant or the injured witness or the police and the accused, such contention unsustainable — Non-explanation of whereabouts of the balance amount would not vitiate the factum of recovery of Rs 15,000 from the possession of the accused along with other incriminating materials — More so, since the accused were apprehended along with the incriminating material while fleeing* (Para 9). *Surender Singh* v. *State of Haryana*, (2006) 9 SCC 247: (2006) 2 SCC (Cri) 444.

Bench Strength **2**. Coram: **H.K. Sema** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 17-1-2006]

[719] — Ss. 396 and 395 — Dacoity at midnight — Delay in holding TI parade and in recovery/identification of stolen property — Effect — *Held, in such cases it takes time for the prosecution to collect evidence — It is also likely that witnesses fear dacoits and shirk to come out and support the prosecution case — Hence, delay in holding test identification parade, or delay in recovery or identification of stolen property not fatal to prosecution — Criminal Trial — Delay* (Para 9). *Narayan Prasad* v. *State of M.P.*, (2005) 13 SCC 247: (2006) 2 SCC (Cri) 161: AIR 2006 SC 204: 2006 Cri LJ 123.

Bench Strength **2**. Coram: *Arun Kumar* and **A.K. Mathur**, JJ. [Date of decision: 8-11-2005]

[720] — Ss. 396 and 395 — Dacoity with murder — Appreciation of evidence — *Recovery witnesses turning hostile — Accused identified by the complain-*

ant (husband of the deceased) at the TI parade — Test identification memos identifying stolen articles recovered from various places, pursuant to disclosure made by accused, proved — Recovery effected at the instance of accused not claimed by them, except one N who claimed that those were purchased by him under receipt — No possibility of planting the case against accused by the police — Testimony of the prosecution witnesses found creditworthy and held, taken together establishes guilt of accused, despite recovery witnesses turning hostile (Para 9). *Narayan Prasad* v. *State of M.P.*, (2005) 13 SCC 247: (2006) 2 SCC (Cri) 161: AIR 2006 SC 204: 2006 Cri LJ 123.

Bench Strength **2**. Coram: *Arun Kumar* and **A.K. Mathur**, JJ. [Date of decision: 8-11-2005]

[721] — S. 403 — Dishonest misappropriation of movable property — Ingredients of the offence — *Property in question must belong to a person other than the accused so as to constitute offence under S. 403*

The basic requirements for attracting the section are: (*i*) the movable property in question should belong to a person other than the accused; (*ii*) the accused should wrongly appropriate or convert such property to his own use; and (*iii*) there should be dishonest intention on the part of the accused. Here again the basic requirement is that the subject-matter of dishonest misappropriation or conversion should be someone else's movable property. When NEPC India owns/possesses the aircraft, it obviously cannot "misappropriate or convert to its own use" such aircraft or parts thereof. Therefore Section 403 is also not attracted. (Para 20). *Indian Oil Corpn.* v. *NEPC India Ltd.*, (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188: AIR 2006 SC 2780: (2006) 2 Guj LH 753.

Bench Strength **2**. Coram: *H.K. Sema* and **R.V. Raveendran**, JJ. [Date of decision: 20-7-2006]

[722] — S. 405 — Criminal breach of trust — Ingredients — Entrustment of the property or dominion over the property — Property hypothecated to creditor — *Creating only a charge on the property with right in favour of the creditor to take possession in the event of default on the part of debtor-hypothecator — Possession remaining with the debtor-owner and creditor having neither ownership nor beneficial interest in the property — Held, element of entrustment not involved in such hypothecation — Owner-debtor does not hold the property in trust for the creditor — Charge over the property created in favour of the creditor does not create a beneficial interest in the creditor unless he takes possession of the property in exercise of his right under the deed of hypothecation — Whether the deed created a floating charge or a fixed charge inconsequential*

A criminal breach of trust involves the following ingredients: (*a*) a person should have been entrusted with property, or entrusted with dominion over property; (*b*) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so; (*c*) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust. (Para 22)

The question is whether there is "entrustment" in an hypothecation? Hypothecation is a mode of creating a security without delivery of title or possession. Both, ownership of the movable property and possession thereof, remain with the debtor. The creditor has an equitable charge over the property and is given a right to take possession and sell the hypothecated movables to recover his dues (Note: no opinion is being expressed on the question whether possession can be taken by the creditor, without or with recourse to a court of law). The creditor may also have the right to claim payment from the sale proceeds (if such proceeds are identifiable and available). But there is no "entrustment of the property" or "entrustment of dominion over the property" by the hypothecatee (creditor) to the hypothecator (debtor) in an hypothecation. When possession has remained with the debtor/owner and when the creditor has neither ownership nor beneficial interest, obviously there cannot be any entrustment by the creditor. (Para 25)

The allegations in the complaints are that aircrafts and the engines fitted therein belong to NEPC India. Possession of the aircraft, neither actual nor symbolic, was delivered to IOC. As the possession of the aircraft remained all along with NEPC India in its capacity as the owner and the deed of hypothecation merely created a charge over the aircrafts with a right to take possession in the event of default, it cannot be said that there was either entrustment of the aircrafts or entrustment of the dominion over the aircrafts by IOC to NEPC India. The very first requirement of Section 405, that is, the person accused of criminal breach of trust must have been "entrusted with the property" or "entrusted with any dominion over property" is, therefore, absent. (Para 27)

It is not possible to accept the contention that *Duncans Agro* decision itself recognises that there can be criminal breach of trust where a beneficial interest exists in the other person, and the offender holds the property in trust for such person and that when the

deed of hypothecation was executed by NEPC India in favour of IOC, the hypothecation created a beneficial interest in the property in favour of IOC, and vis-à-vis such "beneficial interest" of IOC, the possession of the property by NEPC India was in "trust". The Supreme Court in *Duncans Agro* specifically held that when goods are hypothecated, the owner does not hold the goods in trust for the creditor. A charge over the hypothecated goods in favour of the creditor cannot be said to create a beneficial interest in the creditor, until and unless the creditor in exercise of his rights under the deed, takes possession. The term "beneficial interest" has a specific meaning and connotation. When a trust is created vesting a property in the trustee, the right of the beneficiary against the trustee (who is the owner of the trust property) is known as the "beneficial interest". The trustee has the power of management and the beneficiary has the right of enjoyment. Whenever there is a breach of any duty imposed on the trustee with reference to the trust property or the beneficiary, he commits a breach of trust. On the other hand, when the owner of a goods hypothecates a movable property in favour of a creditor, no "beneficial interest" is created in favour of the creditor nor does the owner become a trustee in regard to the property hypothecated. The right of the creditor under a deed of hypothecation is the right to enforce the charge created under the deed of hypothecation in the manner specified in the deed and by no stretch of imagination can such right be equated to a beneficial interest of a beneficiary in a property held in trust. Therefore, the contention that a creditor has a beneficial interest in the hypothecated property and the owner is in the position of a trustee with reference to the creditor is liable to be rejected. (Paras 28 and 29)

There is also no basis for the further submission that *Duncans Agro* case dealt with a hypothecation deed creating a floating charge, whereas the case on hand related to a fixed charge and therefore, the principle laid down in *Duncans Agro*, (1996) 5 SCC 591, will not apply. The principle stated in *Duncans Agro* will apply in regard to all types of hypothecations. It makes no difference whether the charge created by the deed of hypothecation is a floating charge or a fixed charge. Where a specific existing property is hypothecated, what is created is a "fixed" charge. The floating charge refers to a charge created generally against the assets held by the debtor at any given point of time during the subsistence of the deed of hypothecation. The principle in *Duncans Agro* is based on the requirement of "entrustment" and not with reference to the "floating" nature of the charge. (Para 30)

Accordingly, it must be held that the basic and very first ingredient of criminal breach of trust, that is, entrustment, is missing and therefore, even if all the allegations in the complaint are taken at their face value as true, no case of "criminal breach of trust" as defined under Section 405 IPC can be made out against NEPC India. (Para 31). *Indian Oil Corpn.* v. *NEPC India Ltd.*, (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188: AIR 2006 SC 2780: (2006) 2 Guj LH 753.

Bench Strength **2**. Coram: *H.K. Sema* and **R.V. Raveendran**, JJ. [Date of decision: 20-7-2006]

CBI v. Duncans Agro Industries Ltd., (1996) 5 SCC 591: 1996 SCC (Cri) 1045, applied

Gobindram C. Motwani v. Emperor, (1938) 39 Cri LJ 509: AIR 1938 Sind 73, distinguished

— Ss. 405, 406, 408, 409, 420, 467, 468, 471 and 120-B *See* CONSTITUTION OF INDIA — 'Article 136' — Scope of interference — Interference in criminal matters — Bail denied, Art. 136, (2006) 1 SCC 732

[723] — Ss. 405 and 409 — Criminal breach of trust — Burden of proof — *Initial burden on prosecution to prove entrustment of the property to accused — Actual manner of misappropriation of the property by accused need not be proved by it — Once the initial burden is discharged by prosecution, onus would lie on accused to prove how the property entrusted to him was dealt with by him — Amount deposited by PW with respondent Postmaster for purchase of NSCs but the same having not been purchased, complaint made by PW with postal authorities — Respondent having come to know about initiation of inquiry by postal authorities, deposited the full amount with interest in two instalments in post office — Held, trial court rightly convicted respondent under S. 409 — High Court in revision, misdirected itself in taking the view that prosecution failed to prove misappropriation of the amount by respondent — Contention that no question was put to respondent while examining him under S. 313 CrPC as to whether the amount was given to him for his personal use or it was converted by him for his personal use, held, misconceived since while examining under S. 313 CrPC trial court was only required to ask such question which had been brought on record against the accused — Criminal Procedure Code, 1973, S. 313*

The respondent, a Postmaster, was holding an office of public trust. The complainant who was a teacher entrusted a certain amount to the respondent for the purpose of purchasing national savings certificates. As soon as the amount was received by the respondent on behalf of the postal authorities, it became public money. It was required to be utilised for the purpose for which the same was handed over to the respondent. The respondent being a public officer had the requisite knowledge that the amount carried interest as he had deposited the amount in two instalments along with a sum by way of interest. The respondent thought himself liable to pay the said

amount with interest, so as to reimburse to the complainant the amount to which he was entitled by way of interest for depositing the said amount. The High Court erred in taking the view that the second ingredient of Section 405 IPC i.e. misappropriation of the amount by the respondent-accused had not been proved. The High Court, in exercise of its revisional jurisdiction, completely misdirected itself in opining that it was obligatory on the part of PWs to state in their complaint that the accused committed criminal misappropriation with the intention to utilise the amount for his personal use. The very fact that the respondent retained with him the entrusted amount is not disputed. If he did not utilise the amount for the purpose for which the same had been deposited, an offence must be held to have been committed. It was not necessary for the prosecution to bring on record material to show as to how the respondent had utilised the amount. In view of the admitted fact, it was for the respondent himself to prove the defence raised by him that the entire amount had not been paid to him by the complainant. (Paras 8 to 10)

The actual manner of misappropriation, it is well settled, is not required to be proved by the prosecution. Once entrustment is proved, it was for the accused to prove as to how the property entrusted to him was dealt with in view of Section 405 IPC. If the respondent had failed to produce any material for this purpose, the prosecution should not suffer therefor. (Para 11)

It is not possible to accept the further contention that no question was put to the respondent while he was being examined under Section 313 of the Code of Criminal Procedure, with a view to give him an opportunity to explain whether the amount was given to him for his personal use or he converted the money for his personal use. While examining the accused under Section 313 CrPC, the trial court is merely required to ask such question which has been brought on record as against the respondent. The respondent in fact had admitted the entire prosecution case for all intent and purport. The entire evidence which was adduced on behalf of the prosecution was made known to the accused. In his statement under Section 313 CrPC, he accepted that he had received a sum of Rs 8000 from the complainant and he had deposited the said amount together with interest, in two instalments. He has merely reiterated his defence, that the complainant had not paid to him the entire sum of Rs 8000, which has not been accepted by the trial court. Therefore, the High Court committed a manifest error in arriving at a finding that there has been infraction of the mandatory provisions of Section 313 CrPC. (Paras 13 and 14)

For the aforesaid reasons, the impugned judgment cannot be sustained and it is set aside accordingly. (Para 15). *State of H.P.* v. *Karanvir*, (2006) 5 SCC 381: (2006) 2 SCC (Cri) 460: AIR 2006 SC 2211: 2006 Cri LJ 2917.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 12-5-2006]

[724] — Ss. 405, 420, 403 & 415 — Breach of contract — Filing of criminal complaint — Maintainability

A given set of facts may make out: (*a*) purely a civil wrong; or (*b*) purely a criminal offence; or (*c*) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed of, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not. (Para 12). *Indian Oil Corpn.* v. *NEPC India Ltd.*, (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188: AIR 2006 SC 2780: (2006) 2 Guj LH 753.

Bench Strength **2**. Coram: *H.K. Sema* and **R.V. Raveendran**, JJ. [Date of decision: 20-7-2006]

— Ss. 406, 419, 420 and 120-B — Matter, on facts, of civil liability and not criminal — Hence cognizance taken by Magistrate deserved to be quashed under S. 482 CrPC
See CRIMINAL PROCEDURE CODE, 1973, S. 482, (2006) 6 SCC 669

— Ss. 406 and 420 *See* CRIMINAL PROCEDURE CODE, 1973, S. 468, (2005) 13 SCC 699

See also SERVICE LAW — 'Departmental enquiry' — Imposition of penalty/punishment, (2006) 10 SCC 572

[725] — S. 409 — Sentence — Mitigating factors — *CJM convicted respondent under S. 409 and sentenced him to undergo simple imprisonment for 6 months and imposed fine of Rs 1000 — Sessions Court affirmed the conviction and sentence — In revision, High Court acquitted the respondent — Order of acquittal set aside and conviction under S. 409 affirmed by Supreme Court in appeal — But having regard to facts that the offence had been committed 15 years back, respondent had deposited the entire amount (Rs 8000) before lodging of FIR, respondent might have been in custody for some time and respondent now aged about 60 years, held, interest of justice would be subserved if any substantial punishment is not awarded — Accordingly, a further fine of Rs 4000 imposed, apart from Rs 1000 imposed by trial court — In default of payment of the said amount respondent shall undergo simple imprisonment for three months* (Paras 16 and 17). *State of H.P.* v. *Karanvir*, (2006) 5

SCC 381: (2006) 2 SCC (Cri) 460: AIR 2006 SC 2211: 2006 Cri LJ 2917.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 12-5-2006]

[726] — **S. 412 and S. 411 — Receiving stolen property pertaining to dacoity — Punishment for, when warranted** — *No evidence to show that accused had full knowledge that ornaments purchased by them were subject of dacoity — One of the accused, N, claiming that he had purchased them under receipt from some person but that person not examined as defence witness — Hence held, all accused can at best be charged under S. 411 — Sentence of imprisonment reduced to three years from ten years* (Para 10). *Narayan Prasad* v. *State of M.P.*, (2005) 13 SCC 247: (2006) 2 SCC (Cri) 161: AIR 2006 SC 204: 2006 Cri LJ 123.

Bench Strength **2**. Coram: *Arun Kumar* and **A.K. Mathur**, JJ. [Date of decision: 8-11-2005]

[727] — **S. 415 — Cheating — Ingredients** — *Having regard to allegations made in the complaint, held, on facts, elements of deception and inducement with fraudulent intention prima facie made out*

The essential ingredients of the offence of "cheating" are: (*i*) deception of a person either by making a false or misleading representation or by other action or omission, (*ii*) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. (Para 32)

In this case, the complaints clearly allege that the accused with fraudulent intention to cheat and defraud IOC, had induced IOC to resume supply of aircraft fuel on cash-and-carry basis, by entering into a further agreement and undertaking to clear the outstanding amount of Rs 18 crores approximately within the time stipulated in the hypothecation agreements. The sum and substance of the said allegation read with other averments is that NEPC India, having committed default in paying the sum of Rs 18 crores, entered into a fresh agreement agreeing to clear the outstanding amount as per a fresh schedule, with the dishonest and fraudulent intention of pre-empting and avoiding any action by IOC in terms of the hypothecation deeds to take possession of the aircrafts. Though the supplies after the fresh agreement were on cash-and-carry basis, the fraudulent intention is alleged to emanate from the promise under the said agreement to make payment, thereby preventing immediate seizure (taking possession) of the aircrafts by IOC. This allegation made in addition to the allegation relating to removal of engines, has been lost sight of by the High Court. All that is to be seen is whether the necessary allegations exist in the complaint to bring the case within Section 415. Thus the allegations in the complaint constitute such an offence. The Court is not concerned with the proof of such allegations or ultimate outcome of trial at this stage. (Para 36). *Indian Oil Corpn.* v. *NEPC India Ltd.*, (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188: AIR 2006 SC 2780: (2006) 2 Guj LH 753.

Bench Strength **2**. Coram: *H.K. Sema* and **R.V. Raveendran**, JJ. [Date of decision: 20-7-2006]

— **Ss. 419, 420, 467 and 468** *See* ASSOCIATIONS, SOCIETIES AND CLUBS — 'Societies Registration Act, 1860', Ss. 28, 4 and 27, (2006) 9 SCC 206

— **S. 420** *See* NEGOTIABLE INSTRUMENTS ACT, 1881, Ss. 138 & 142(b), (2006) 9 SCC 340

— **Ss. 420, 421, 466, 468, 471, 465 & 120-B** *See* CRIMINAL TRIAL — 'Sentence' — Reduction of sentence, (2006) 7 SCC 414

— **Ss. 420, 467, 468, 471 and 120-B — Sanction under S. 197 CrPC for prosecution for offences under — Held, there is no such requirement** *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 197 and 420, 467, 468, 471 and 120-B, Penal Code, 1860, (2007) 1 SCC 1

[728] — **Ss. 420 and 406 — Offences under — Averments necessary to make out** — *Petitioner failing to honour the agreement to sell in spite of three legal notices being sent to him and the complainant respondent fulfilling his part — Held, in absence of any averments in the complaint so as to infer fraudulent or dishonest inducement having been made by the petitioner, pursuant to which the respondent parted with his money, it cannot be said that the petitioner had cheated the respondent — No case for prosecution under S. 420 or S. 406, even prima facie, made out* (Para 6). *Murari Lal Gupta* v. *Gopi Singh*, (2005) 13 SCC 699: (2006) 2 SCC (Cri) 430.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and *G.P. Mathur* and *P.P. Naolekar*, JJ. [Date of decision: 25-10-2005]

[729] — **S. 425 — Mischief — Ingredients** — *Ownership and possession of the property is not relevant — Even though the property belongs to the accused, if the ingredients are made out, accused can be held to have committed mischief*

There are three ingredients of the section which are: (*i*) intention to cause or knowledge that he is likely to cause wrongful loss or damage to the public or to any person; (*ii*) causing destruction of some property or any change in the property or in the situation thereof; and (*iii*) the change so made destroying or diminishing the value or utility or affecting it injuriously. For the purpose of Section 425, ownership or

possession of the property is not relevant. Even if the property belongs to the accused himself, if the ingredients are made out, mischief is committed, as is evident from Illustrations (*d*) and (*e*) to Section 425. The complaints clearly allege that NEPC India had removed the engines thereby making a change in the aircrafts and that such removal has diminished the value and utility of the aircrafts and affected them injuriously, thereby causing loss and damage to IOC, which has the right to possess the entire aircraft. The allegations clearly constitute the offence of "mischief". The Court is not concerned with the proof or ultimate decision. (Para 37)

Thus the High Court was not justified in quashing the complaints/criminal proceedings in entirety. The allegations in the complaints are sufficient to constitute offences under Sections 415 and 425 IPC. Accordingly, the appeals are allowed in part and the order of the High Court insofar as it quashes the complaints under Sections 415 and 425 is set aside. (Para 38). *Indian Oil Corpn.* v. *NEPC India Ltd.*, (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188: AIR 2006 SC 2780: (2006) 2 Guj LH 753.

Bench Strength **2**. Coram: *H.K. Sema* and **R.V. Raveendran**, JJ. [Date of decision: 20-7-2006]

— Ss. 494 and 420 *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 198(1) proviso (c) and 482, (2006) 6 SCC 536

[730] — Ss. 498-A & 34 — Compromise — Effect — *Appellants along with other three accused convicted under S. 498-A r/w S. 34 by the trial court and sentenced to RI for 2 years — High Court in appeal confirming the said order — SLP filed by the three accused against conviction dismissed by the Supreme Court — No point of distinction in case of appellants vis-à-vis the other three accused — Submission that appellants have been in custody for more than two months and an affidavit has been field by the victim stating that the disputes have been amicably settled — Held, offence under S. 498-A is not compoundable and hence permission cannot be accorded to record the compromise, but effect of the same can be taken into consideration while awarding sentence — Sentence of imprisonment reduced to the period already undergone* (Paras 1 and 3). *Badal Deb* v. *State of Assam*, (2006) 10 SCC 540: (2007) 1 SCC (Cri) 139.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 2-3-2006]

— Ss. 499 and 500 *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 257, 199 and 482, (2006) 8 SCC 321

— S. 511 *See also* Ss. 376/511 — 'Attempt to rape', above, (2006) 8 SCC 560

[731] — S. 511 — An attempt in order to be criminal need not be the penultimate act. *Lachman Singh* v. *State of Haryana*, (2006) 10 SCC 524: (2007) 1 SCC (Cri) 123: AIR 2006 SC 2763: 2006 Cri LJ 4041.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 28-7-2006]

PENOLOGY

— Deterrent punishment *See* PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Sentence, S. 376, (2005) 13 SCC 766

— Minimum statutory sentence — Interference with award of, by Supreme Court by grant of special leave under Art. 136 — Impermissibility *See* CRIMINAL TRIAL — 'Sentence' — Minimum statutory sentence, (2006) 5 SCC 512

— Punishment — Proportionality of *See* CRIMINAL TRIAL — 'Sentence' — Proportionality, (2006) 10 SCC 673

— Sentencing — Duty of court to impose proper sentence commensurate with gravity of offence — Rape case — Relevant factors to be taken into account in *See* PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Sentence, S. 376, (2006) 3 SCC 771

— Sentencing — Principle of proportionality — Deterrent theory — Duty of courts *See* CRIMINAL TRIAL — 'Sentence' — Generally, (2006) 2 SCC 359

[732] — Sentencing — Reduction of sentence — Grounds for — *Reduction of sentence to one already undergone keeping in view the advanced age of accused and their non-involvement in actual offence of causing the injuries — Penal Code, 1860, S. 201*

From the conspectus of events and the manner in which the appellants are said to have taken part in the commission of crime, it is clear that they had the requisite knowledge about the commission of an offence. The very fact that an injured person was being carried out to the hospital in a cot and the appellants not only assisted the main accused persons in snatching away the cot, two of them carried the cot themselves and two others were armed with firearms clearly establishes their knowledge about commission or the likelihood of offence. In view of the concurrent finding of fact by both the courts, no case has been made out for exercising of the Supreme Court's jurisdiction under Article 136 of the Constitution. (Paras 27 and 34)

However, having regard to the fact that all the four appellants are above 70 years of age and furthermore in view of the fact that as they were not connected with the first part of the occurrence, interest of justice would be subserved if they are sentenced to the period already undergone by them (five months, three months fifteen days, seven months and four months respectively). (Para 35). *Budhan Singh* v. *State of Bihar*, (2006) 4 SCC 740: (2006) 2 SCC (Cri) 402: AIR 2006 SC 1959: 2006 Cri LJ 2451.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 25-4-2006]

PERJURY

See CONTEMPT OF COURT

PLACE OF OCCURRENCE

See CRIMINAL TRIAL

POLICE

Synopsis

1. Generally
2. Bombay Police Act, 1951 (22 of 1951)
3. CBI
4. Delhi Police Act, 1978 (34 of 1978)
5. Delhi Special Police Establishment Act, 1946 (25 of 1946)
6. Madras Village Police Regulations, 1816
7. Madras Village Police Regulations, 1821
8. Police Act, 1861
9. U.P. Police Regulations

1. GENERALLY

[733] — **Police reform — Measures to insulate police machinery from political/executive interference, to make it more efficient and effective and to strengthen and preserve the rule of law** — *Detailed directions issued by Supreme Court, based principally on recommendations of National Police Commission (1977-1981), and other commissions and committees set up thereafter in respect of police reform — Need for such directions, discussed in detail — Directions given for compliance with the above directions by Central Government, State Governments or Union Territories on or before 31-12-2006, so that the bodies directed to be set up by the Supreme Court in this judgment become operational by 1-1-2007 — Cabinet Secy., Govt. of India and Chief Secretaries of State Governments/UTs directed to file affidavits of compliance by 3-1-2007 — Rule of Law — Preservation and strengthening of*

Considering the far-reaching changes that had taken place in the country after the enactment of the Police Act, 1861 and the absence of any comprehensive review at the national level of the police system after independence, despite radical changes in the political, social and economic situation in the country, the Government of India, on 15-11-1977, appointed a National Police Commission ("the Commission"). The Commission was appointed for fresh examination of the role and performance of the police both as a law-enforcing agency and as an institution to protect the rights of citizens enshrined in the Constitution.

The terms and reference of the Commission were wide ranging. The Commission examined all issues in depth, in a period of about three-and-a-half years. The Commission submitted its reports between 1979 and 1981. It was noticed in the reports that the crux of the police reform was to secure professional independence for the police to function truly and efficiently as an impartial agent of the law of the land and, at the same time, to enable the Government to oversee the police performance to ensure its conformity to the law. A supervisory mechanism without scope for illegal, irregular or mala fide interference with police functions had to be devised.

When the recommendations of the Commission were not implemented, for whatever reasons or compulsions, and they met the same fate as the recommendations of many other Commissions, this petition under Article 32 of the Constitution was filed about 10 years back, *inter alia*, praying for issue of directions to the Government of India to frame a new Police Act on the lines of the model Act drafted by the Commission in order to ensure that the police was made accountable essentially and primarily to the law of the land and the people.

It was averred in the petition that the violation of fundamental and human rights of citizens was generally in the nature of non-enforcement and discriminatory application of the laws so that those having clout were not held accountable even for blatant violations of laws and, in any case, not brought to justice for the direct violations of the rights of citizens in the form of unauthorised detentions, torture, harassment, fabrication of evidence, malicious prosecutions, etc. The petition set out certain glaring examples of police inaction. According to the petitioners, both distinguished retired Senior Police Officers, the present distortions and aberrations in the functioning of the police had their roots in the Police Act, 1861, structure and organisation of the police having basically remained unchanged all these years.

Since the misuse and abuse of police had reduced it to the status of a mere tool in the hands of unscrupulous masters and in the process it had caused serious violations of the rights of the people, it was contended that there was immediate need to redefine the scope and functions of police, and provide for its accountability to the law of the land, and implement the core recommendations of the Commission. The petition referred to a research paper "*Political and Administrative Manipulation of the Police*" published in 1979 by the Bureau of Police Research and Development, warning that excessive control of the political executive and its principal advisers over the police had the inherent danger of making the police a tool for subverting the process of law, promoting the growth of authoritarianism, and shaking the very foundations of democracy.

Disposing of the writ petition with the following directions,

Held :

The commitment, devotion and accountability of the police has to be only to the rule of law. The supervision and control has to be such that it ensures that the police serves the people without any regard, whatsoever, to the status and position of any person while investigating a crime or taking preventive measures. Its approach has to be service oriented, its role has to be defined so that in appropriate cases, where on account of acts of omission and commission of police, the rule of law becomes a casualty, the guilty police officers are brought to book and appropriate action is taken without any delay. (Para 12)

None of the State Governments/Union Territories urged that any of the suggestions put forth by the petitioners and the Solicitor General of India may not be accepted. Besides the report submitted to the Government of India by the National Police Commission (1977-81), various other High-Powered Committees and Commissions have examined the issue of police reforms viz. (*i*) National Human Rights Commission, (*ii*) Law Commission, (*iii*) Ribeiro Committee, (*iv*) Padmanabhaiah Committee, and (*v*) Malimath Committee on Reforms of Criminal Justice System. In addition to the above, the Government of India in terms of office memorandum dated 20-9-2005 constituted a committee comprising Shri Soli Sorabjee, former Attorney General and five others to draft a new Police Act. The Sorabjee Committee has prepared a draft outline for a new Police Act (9-9-2006). Despite strong expression of opinions by various commissions, committees and even a Home Minister of the country, the position has not improved as these opinions have remained only on paper, without any action. In fact, the position has deteriorated further as can be seen from the report dated 31-5-2002 of the National Human Rights Commission. (Paras 14 to 16 and 18)

Besides the Home Minister, all the commissions and committees abovenoted, have broadly come to the same conclusion on the issue of urgent need for police reforms. There is convergence of views on the need to have (*a*) State Security Commission at State level; (*b*) transparent procedure for the appointment of the Police Chief and the desirability of giving him a minimum fixed tenure; (*c*) separation of investigation work from maintenance of law and order; and (*d*) a new Police Act which should reflect the democratic aspirations of the people. It was contended that a statutory State Security Commission with its recommendations binding on the Government should have been established long before. The apprehension expressed is that any commission without giving its report a binding effect would be ineffective. (Para 20)

There is no doubt that the Sorabjee Committee Report and the new Act will receive due attention of the Central Government which may recommend to the State Governments to consider passing the State Acts on the suggested lines. It is expected that the State Governments would give it due consideration and would pass suitable legislations on recommended lines, the police being a State subject under the Constitution. However, the Supreme Court cannot wait further for the Governments to take suitable steps for police reforms. It is not possible or proper to leave this matter only with an expression of this hope and to await developments further. It is essential to lay down guidelines to be operative till the new legislation is enacted by the State Governments. (Paras 25 and 29)

Having regard to (*i*) the gravity of the problem; (*ii*) the urgent need for the preservation and strengthening of the rule of law; (*iii*) pendency of even this petition for the last over ten years; (*iv*) the fact that various commissions and committees have made recommendations on similar lines for introducing reforms in the police set-up in the country; and (*v*) total uncertainty as to when police reforms would be introduced, there cannot be any further wait, and the stage has come for issuing of appropriate directions for immediate compliance so as to be operative till such time a new model Police Act is prepared by the Central Government and/or the State Governments pass the requisite legislations. The quality of the criminal justice system in the country, to a large extent, depends upon the working of the police force. Thus, having regard to the larger public interest, it is absolutely necessary to issue the requisite directions. (Para 26)

Article 32 read with Article 142 of the Constitution empowers the Supreme Court to issue such directions, as may be necessary for doing complete justice in any cause or matter. All authorities are mandated by Article 144 to act in aid of the orders passed by the Supreme Court. The decision in *Vineet Narain*, (1998) 1 SCC 226, notes various decisions of the Supreme Court where guidelines and directions to be observed were issued in the absence of legislation and implemented till the legislatures pass appropriate legislations. (Para 30)

In discharge of the Supreme Court's constitutional duties and obligations having regard to the aforenoted position, the following directions are issued to the Central Government, State Governments and Union Territories for compliance till framing of the appropriate legislations. The said directions shall be complied with by the Central Government, State Governments or Union Territories, as the case may be, on or before 31-12-2006 so that the bodies directed to be set up become operational on the onset of the new

year. The Cabinet Secretary, Government of India and the Chief Secretaries of State Governments/Union Territories are directed to file affidavits of compliance by 3-1-2007. (Para 31)

A summary of the directions is as follows:

State Security Commission

The State Governments are directed to constitute a State Security Commission in every State (in the manner detailed herein) to ensure that the State Government does not exercise unwarranted influence or pressure on the State Police and for laying down the broad policy guidelines so that the State Police always acts according to the laws of the land and the Constitution of the country. This watchdog body shall be headed by the Chief Minister or Home Minister as Chairman and have the DGP of the State as its ex officio Secretary. The other members of the Commission shall be chosen in such a manner that it is able to function independent of Government control. The functions of the State Security Commission would include laying down the broad policies and giving directions for the performance of the preventive tasks and service-oriented functions of the police, evaluation of the performance of the State Police and preparing a report thereon for being placed before the State Legislature. The recommendations of this Commission shall be binding on the State Government. (Para 31)

Selection and minimum tenure of DGP

The Director General of Police of the State shall be selected by the State Government from amongst the three seniormost officers of the Department who have been empanelled for promotion to that rank by the Union Public Service Commission on the basis of their length of service, very good record and range of experience for heading the police force. And, once he has been selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuation. The DGP may, however, be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission on grounds of conviction, incapacitation, etc., as detailed herein. (Para 31)

Minimum tenure of IG of police and other officers

Police officers on operational duties in the field like the Inspector General of Police in-charge Zone, Deputy Inspector General of Police in-charge Range, Superintendent of Police in-charge District and Station House Officer in-charge of a Police Station shall also have a prescribed minimum tenure of two years unless it is found necessary to remove them on grounds of conviction, incapacitation, etc., as detailed herein. (Para 31)

Separation of investigation

The investigating police shall be separated from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people. It must, however, be ensured that there is full coordination between the two wings. The separation, to start with, may be effected in towns/urban areas which have a population of ten lakhs or more, and gradually extended to smaller towns/urban areas also. (Para 31)

Police Establishment Board

There shall be a Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police. The State Government may interfere with the decision of the Board in exceptional cases, only after recording its reasons for doing so. The Board shall also be authorised to make appropriate recommendations to the State Government regarding the postings and transfers of officers of and above the rank of Superintendent of Police, and the Government is expected to give due weight to these recommendations and shall normally accept them. It shall also function as a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above regarding their promotions/transfers/disciplinary proceedings or their being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State. (Para 31)

Police Complaints Authority

There shall be a Police Complaints Authority at the district level to look into complaints against police officers of and up to the rank of Deputy Superintendent of Police. Similarly, there should be another Police Complaints Authority at the State-level to look into complaints against officers of the rank of Superintendent of Police and above. The district-level Authority may be headed by a retired District Judge while the State-level Authority may be headed by a retired Judge of the High Court/Supreme Court. The State-level Complaints Authority would take cognizance of only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt or rape in police custody. The district-level Complaints Authority would, apart from the above cases, also inquire into allegations of extortion, land/house grabbing or any incident involving serious abuse of authority. The recommendations of the Complaints Authority, both at the district and State-levels, for any action, departmental or criminal, against a delinquent police officer shall be binding on the authority concerned. (Para 31)

National Security Commission

The Central Government shall also set up a National Security Commission at the Union level to prepare a panel for being placed before the appropriate appointing authority, for selection and placement of Chiefs of the Central Police Organisations (CPOs), who should also be given a minimum tenure of two years. The Commission would also review from time to time measures to upgrade the effectiveness of these forces, improve the service conditions of its personnel, ensure that there is proper coordination between them and that the forces are generally utilised for the purposes they were raised for and make recommendations in that behalf. The National Security Commission could be headed by the Union Home Minister and comprise heads of CPOs and a couple of security experts as members with the Union Home Secretary as its Secretary. (Para 31). *Prakash Singh* v. *Union of India*, (2006) 8 SCC 1: (2006) 3 SCC (Cri) 417.

Bench Strength **3**. Coram: **Y.K. Sabharwal**, **C.J.** and *C.K. Thakker* and *P.K. Balasubramanyan*, JJ. [Date of decision: 22-9-2006]

[**Ed.**: *See also* Art. 32, '(e)(6)(x) Executive or Legislative action/inaction or gaps — Order/directions redressing or filling', pp. 579 et seq. in Vol. 7, *Complete Digest of Supreme Court Cases*, 2nd Edn.]

2. BOMBAY POLICE ACT, 1951 (22 OF 1951)

— Ss. 56 and 59 *See* 'Delhi Police Act, 1978 (34 of 1978)', Ss. 47, 49 & 50, below, (2006) 5 SCC 228

3. CBI

— Role of — Nature of cases to be directly entrusted to *See* CONSTITUTION OF INDIA, Sch. VII List I Entry 1 and Art. 355, (2006) 8 SCC 1

4. DELHI POLICE ACT, 1978 (34 OF 1978)

[734] — Ss. 47, 49 & 50 — Externment — Proceedings — Nature — Different from preventive detention as well as from ordinary proceedings — *Bombay Police Act, 1951 (22 of 1951), Ss. 56 and 59*

An externment proceeding having regard to the purport and object thereof, cannot be equated with a preventive detention matter. Further, a proceeding under Section 47 of the Delhi Police Act stands on a different footing than the ordinary proceeding in the sense that whereas in the latter the details of the evidence are required to be disclosed and, thus, giving an opportunity to the proceedee to deal with them, in the former, general allegations would serve the purpose. (Para 18). *Lt. Governor, NCT* v. *Ved Prakash*, (2006) 5 SCC 228: (2006) 2 SCC (Cri) 449.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 5-5-2006]

[735] — Ss. 47, 49 & 50 — Externment — Order must show due application of mind by authority to relevant facts — Interference of court — When called for — *Subjective satisfaction of the authority must be based on objective criteria — If so, court would not normally interfere — Court would however safeguard externee's right under Art. 21 and can examine the records to satisfy itself that prescribed procedural safeguards had been complied with — Scope and extent of such judicial review discussed — But court cannot direct the authorities either to disclose names of the witnesses or number of cases where such witnesses were examined — Bombay Police Act, 1951 (22 of 1951), Ss. 56 and 59*

An externment proceeding was initiated against the respondent under Section 47 of the Delhi Police Act, 1978, inter alia, on ground that his movements and acts had been causing alarm, danger and harm to persons and property. A show-cause notice was issued to the respondent. The respondent filed show cause. He also examined witnesses on his own behalf. Subsequently a supplementary notice was also issued to him purported to be under Section 50 of the said Act. It appeared from the office noting/proceeding that two public witnesses had appeared before the Addl. Dy. Commissioner of Police to depose against the respondent and that having gone through the camera statements of those witnesses and other materials, the authority concerned was satisfied that sufficient grounds existed for proceeding against the respondent under Section 47. Accordingly, an order of externment was passed against the respondent directing his removal beyond the limits of the National Capital Territory of Delhi for a period of two years.

The order was challenged before High Court. The High Court held that in view of the fact that in the show-cause notice in regard to the criminal cases the names of the witnesses who were said to be reluctant to or did not come forward to depose against the respondent on account of fear, had not been disclosed, the principles of natural justice have been violated. It opined that the record should clearly suggest or support the satisfaction and should show in which cases the witnesses had declined to appear on account of apprehension to their safety. It observed that although a list of cases appeared in both the show-cause notices, but no attempt had been made in the notices to connect as to in which of those cases witnesses were not forthcoming due to the respondent's activities.

Allowing the appeal of the State,

Held :

It is not possible to lay down the law in precise terms in regard to externment proceeding as the facts of each case are to be considered on their own merit.

In this case the High Court was not correct in coming to the finding that the third appellant was bound to disclose the cases in which the witnesses had not deposed against the respondent out of fear or because of threat, etc. (Paras 26 and 20)

While interpreting the provisions of a statute like the present one and in view of the precedents operating in the field, the court may examine the records itself so as to satisfy its conscience not only for the purpose that the procedural safeguards available to the proceedee have been provided but also for the purpose that the witnesses have disclosed their apprehension about deposing in court truthfully and fearlessly because of the activities of the proceedee. The High Court ordinarily should insist on production of the entire records including the statement of the witnesses to express their intention to keep their identity in secret so as to arrive at a satisfaction that such statements are absolutely voluntary in nature and had not been procured by the police officers themselves. Once such a satisfaction is arrived at, the superior court will normally not interfere with an order of externment. The court, in any event, would not direct the authorities to either disclose the names of the witnesses or the number of cases where such witnesses were examined for the simple reason that they may lead to causing of further harm to them. In a given case, the number of prosecution witnesses may not be many and the proceedee as an accused in the said case is expected to know who were the witnesses who had been examined on behalf of the prosecution and, thus, the purpose of maintaining the secrecy as regards identity of such persons may be defeated. The court must remind itself that the law is not mere logic but is required to be applied on the basis of its experience. (Paras 22 and 19)

An order of externment must always be restricted to the area of illegal activities of the externee. The executive order must demonstrate due application of mind on the part of the statutory authority. When the validity of an order is questioned, what would be seen is the material on which the satisfaction of the authority is based. The satisfaction of the authority although primarily subjective, should be based on objectivity. But sufficiency of material as such may not be gone into by the writ court unless it is found that in passing the impugned order the authority has failed to take into consideration the relevant facts or had based its decision on irrelevant factors not germane therefor. Mere possibility of another view may not be a ground for interference. It is not a case where malice was alleged against the third appellant. (Para 21)

In a proceeding under the Act all statutory and constitutional requirements must be fulfilled. The High Court and the Supreme Court would undoubtedly jealously guard the fundamental rights of a citizen. While exercising the jurisdiction rested in them invariably, the courts would make all attempts to uphold the human right of the proceedee. The fundamental right under Article 21 of the Constitution undoubtedly must be safeguarded. The test of procedural safeguards contained in the Act must be scrupulously complied with. Before an order of externment is passed, the proceedee is entitled to an opportunity of hearing. (Paras 18 and 22)

An externment proceeding having regard to the purport and object thereof, cannot be equated with a preventive detention matter. Further, a proceeding under Section 47 of the Delhi Police Act stands on a different footing than the ordinary proceeding in the sense that whereas in the latter the details of the evidence are required to be disclosed and, thus, giving an opportunity to the proceedee to deal with them, in the former, general allegations would serve the purpose. (Para 18). *Lt. Governor, NCT* v. *Ved Prakash*, (2006) 5 SCC 228: (2006) 2 SCC (Cri) 449.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 5-5-2006]

[736] — Ss. 47, 49 & 50 — Externment proceedings — Constitutional and statutory procedural requirements must be strictly complied with — *Person proposed to be externed entitled to opportunity of hearing before order of externment is passed — Bombay Police Act, 1951 (22 of 1951), Ss. 56 and 59*

In a proceeding under the Act all statutory and constitutional requirements must be fulfilled. The High Court and the Supreme Court would undoubtedly jealously guard the fundamental rights of a citizen. While exercising the jurisdiction rested in them invariably, the courts would make all attempts to uphold the human right of the proceedee. The fundamental right under Article 21 of the Constitution undoubtedly must be safeguarded. The test of procedural safeguards contained in the Act must be scrupulously complied with. Before an order of externment is passed, the proceedee is entitled to an opportunity of hearing. (Paras 18 and 22). *Lt. Governor, NCT* v. *Ved Prakash*, (2006) 5 SCC 228: (2006) 2 SCC (Cri) 449.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 5-5-2006]

5. DELHI SPECIAL POLICE ESTABLISHMENT ACT, 1946 (25 OF 1946)

— S. 3 *See* PUBLIC ACCOUNTABILITY AND VIGILANCE — 'Vigilance Authorities' — CBI, (2007) 1 SCC 110

— Ss. 3 and 4 — CBI — Powers of investigation of — Norms governing — Offences committed under PC Act, 1988 *See* PUBLIC ACCOUNTABILITY AND VIGILANCE — 'Vigilance Authorities' — CBI, (2007) 1 SCC 110

— **Ss. 3, 5 and 6** *See* CRIMINAL PROCEDURE CODE, 1973, S. 482, (2006) 7 SCC 188

6. MADRAS VILLAGE POLICE REGULATIONS, 1816

— **Regn. 10** *See* EVIDENCE ACT, 1872, S. 24, (2006) 1 SCC 714

7. MADRAS VILLAGE POLICE REGULATIONS, 1821

— **Regn. 6** *See* EVIDENCE ACT, 1872, S. 24, (2006) 1 SCC 714

8. POLICE ACT, 1861

— **Ss. 1 to 3** *See* PREVENTION OF CORRUPTION ACT, 1988, S. 17, (2007) 1 SCC 1

9. U.P. POLICE REGULATIONS

— **Regns. 97, 108 and 109** *See* CRIMINAL PROCEDURE CODE, 1973 — 'Section 154 — FIR' — Delay in lodging/filing FIR, Ss. 154 and 157, (2006) 9 SCC 731

POLICE ACT, 1861

See POLICE

POST AND TELEGRAPH

[737] — **Sending letter under certificate of posting and by registered post — Difference** — *Evidence regarding sending by registered post is more reliable — Where dispatch of letter is disputed or denied, a certificate of posting may be of very little assistance — In respect of certificate of posting, regular maintenance by P&T Deptt. of a record regarding issuance of certificates showing serial number, date, sender's name and addressee's name to avoid misuse suggested — Civil Procedure Code, 1908, Or. 5 Rr. 9 and 9-A*

A certificate of posting obtained by a sender is not comparable to a receipt for sending a communication by registered post. When a letter is sent by registered post, a receipt with serial number is issued and a record is maintained by the post office. But when a mere certificate of posting is sought, no record is maintained by the post office either about the receipt of the letter or the certificate issued. The ease with which such certificates can be procured by affixing antedated seal with the connivance of any employee of the post office is a matter of concern. The Department of Posts may have to evolve some procedure whereby a record in regard to the issuance of certificates is regularly maintained showing a serial number, date, sender's name and addressee's name to avoid misuse. In the absence of such a record, a certificate of posting may be of very little assistance, where the dispatch of such communications is disputed or denied as in this case. (Para 17). *State of Maharashtra* v. *Rashid B. Mulani*, (2006) 1 SCC 407: (2006) 1 SCC (Cri) 408: AIR 2006 SC 825: 2006 Cri LJ 794: (2006) 39 AIC 65 (SC).

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 4-1-2006]

PRACTICE AND PROCEDURE

See CONSTITUTION OF INDIA — 'Article 32'

Synopsis

1. Abatement of Appeal
2. Finality of Judgment/Order
3. Mixed Question of Fact and Law
4. Pleadings/New Plea/Additional Plea/Alternative Plea
5. Question of Fact
6. Record of the Case
7. Remand
8. Speedy Disposal of Cases
9. Vakalatnama

1. ABATEMENT OF APPEAL

See CRIMINAL PROCEDURE CODE, 1973, S. 394, (2006) 5 SCC 683

2. FINALITY OF JUDGMENT/ORDER

[738] — **No further challenge made to judgment of High Court confirming withdrawal of prosecution — Effect of — Grievance relating to said matter made in present appeal — Sustainability of** — *Held, said judgment of High Court became final and binding on the parties — Making grievance relating to that matter in present appeal, held, was wholly unjustified — Criminal Procedure Code, 1973, S. 321*

The appellant aggrieved by the order by which the Court's approval was granted for withdrawal of the prosecution, preferred a criminal revision petition in the High Court. The High Court by a detailed and comprehensive judgment on 28-9-1991 dismissed the revision petition. The said judgment of the High Court became final and binding on the parties because the appellant had never challenged that judgment. Therefore, the appellant is wholly unjustified in making any grievance in respect of the prosecution which had already been withdrawn against Respondent 3 a long time ago and the said order was affirmed by the High Court and no proceedings were taken against the said judgment of the High Court. (Paras 15 and 20). *Ghanshyam* v. *State of M.P.*, (2006) 10 SCC 473: (2006) 3 SCC (Cri) 602.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

3. MIXED QUESTION OF FACT AND LAW

[739] — **Question of limitation — Nature of** — *Held on facts, was not a pure question of law but a mixed question of law and facts and for deciding the said question certain disputed questions of facts were required to be adjudicated upon after giving opportunity to parties to adduce evidence — Said procedure having not been adopted, the trial court committed an error in dismissing the complaint on the ground that*

the same was barred by limitation and the High Court was not justified in upholding the said order — Hence impugned orders set aside and matter remitted to trial court for decision afresh — Criminal Procedure Code, 1973, S. 468 (Paras 3 and 4). *Gurubachan Singh Gill* v. *J.S. Bagga*, (2005) 13 SCC 381: (2006) 2 SCC (Cri) 249.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 16-9-2005]

4. PLEADINGS/NEW PLEA/ADDITIONAL PLEA/ALTERNATIVE PLEA

— New plea — That injury in question could not be attributed to the weapon of offence — Not allowed *See* CRIMINAL TRIAL — 'Wounds and Weapons', (2005) 13 SCC 323

— Pleadings — Proper form and mode of *See* CONSTITUTION OF INDIA — 'Article 32' — Practice and Procedure — Pleadings/New Plea/Additional Plea/Alternative Plea, Art. 32, (2006) 6 SCC 613

5. QUESTION OF FACT

[740] — **Proper forum to decide** — *Such question raised before Supreme Court — Matter pending before trial court — Held, not necessary for Supreme Court to pronounce on the said question — Arguments raised in that regard were of no avail while considering the constitutional challenge to relevant provisions of the Act concerned (FERA) — Question directed to be raised at trial — Foreign Exchange Regulation Act, 1973, S. 68(1)*

The question whether a particular person who is sought to be prosecuted under Section 68(1) of the Foreign Exchange Regulation Act, 1973, is the person who is liable to be prosecuted under Section 68(1), is a question that has to be raised at the trial. The question sought to be raised depends upon the facts of the case proved before the court dealing with the prosecution and it is not necessary for the Supreme Court to pronounce on those aspects in these appeals. Suffice it to say that the arguments on this score are of no avail while considering the constitutional challenge to Section 68 of FERA as being violative of Articles 14 and 21 of the Constitution. The contention is rejected, leaving it to the appellant concerned to raise that plea before the appropriate forum regarding his culpability under Section 68(1) of the FERA. (Para 19). *Standard Chartered Bank* v. *Directorate of Enforcement*, (2006) 4 SCC 278: (2006) 2 SCC (Cri) 221: AIR 2006 SC 1301: (2006) 127 DLT 747: (2006) 197 ELT 18.

Bench Strength **3**. Coram: *Y.K. Sabharwal*, *C.J.* and *C.K. Thakker* and **P.K. Balasubramanyan**, JJ. [Date of decision: 24-2-2006]

6. RECORD OF THE CASE

— Reconstruction of — Necessity of *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 385(2) and 386(b), (2005) 13 SCC 444

7. REMAND

— Order in respect of, made with direction to pass appropriate order within three months from the receipt of the order of the Supreme Court *See* 'Speedy disposal of cases', below, (2006) 6 SCC 159

8. SPEEDY DISPOSAL OF CASES

[741] — **Directions for** — *Matter remitted to High Court with direction to pass appropriate order within three months from the receipt of the order of the Supreme Court* (Para 9). *Daljit Singh* v. *State of Punjab*, (2006) 6 SCC 159: (2006) 3 SCC (Cri) 20.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 27-7-2006]

9. VAKALATNAMA

[742] — **Filing of vakalatnama without an affidavit — Effect** — *Held, the same can still constitute a statement of the person filing the vakalatnama — Civil Procedure Code, 1908, Or. 3 R. 4 and Or. 12 R. 1 — Criminal Procedure Code, 1973, Ss. 205, 206 and 382* (Para 16). *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367: (2006) 2 KLT 350: 2006 Cri LJ 1694.

Bench Strength **2**. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 8-3-2006]

PRE-EXECUTION CHALLENGE TO DETENTION ORDER

See PREVENTIVE DETENTION — 'Detention order'

PRECEDENTS

See also CONSTITUTION OF INDIA — 'Article 141'

Synopsis

1. Generally
2. Binding Precedents
3. Ratio Decidendi
4. Obiter
5. Per Incuriam Decision
6. Precedent on Facts
7. Supreme Court

1. GENERALLY

[743] — **A decision is an authority for what it decides and not what can logically be deduced therefrom**. *State of Haryana* v. *Ranbir*, (2006) 5 SCC 167: 2006 SCC (L&S) 1012: AIR 2006 SC 1796: 2006 Cri LJ 2142: (2006) 2 KLT 370.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-4-2006]

2. BINDING PRECEDENTS

See CONSTITUTION OF INDIA — 'Article 141' — Binding effect of law declared by the Supreme Court, Art. 141, (2006) 3 SCC 434

3. RATIO DECIDENDI

[744] — What is the ratio, reiterated — Caution to be exercised in applying ratio of a case, emphasised

A decision is an authority for what it actually decides. Reference to a particular sentence in the context of the factual scenario cannot be read out of context. (Para 49). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

4. OBITER

[745] — Meaning and binding effect of

The distinction between a dicta and obiter is well known. Obiter dicta is more or less presumably unnecessary to the decision. It may be an expression of a viewpoint or sentiments which has no binding effect. The statements which are not part of the ratio decidendi constitute obiter dicta and are not authoritative. (Para 12). *State of Haryana* v. *Ranbir*, (2006) 5 SCC 167: 2006 SCC (L&S) 1012: AIR 2006 SC 1796: 2006 Cri LJ 2142: (2006) 2 KLT 370.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 5-4-2006]

5. PER INCURIAM DECISION

See CONSTITUTION OF INDIA — 'Article 141' — Nature and Scope, Art. 141, (2006) 5 SCC 752

[746] — Binding effect of — Words "incuria" and per incuriam — Meaning of, explained — *Held, decisions made without considering the effect of relevant mandatory provisions must be treated as rendered per incuriam having no precedential value — Constitution of India — Article 141 — Precedents, Art. 141 — Words and phrases — "incuria", "per incuriam"*

"Incuria" literally means "carelessness". In practice per incuriam is taken to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The "quotable in law" is avoided and ignored if it is rendered, "in ignoratium of a statute or other binding authority" as held in *Bristol Aeroplane case*, (1944) 2 All ER 293. Same has been accepted, approved and adopted by the Supreme Court while interpreting Article 141 of the Constitution of India, which embodies the doctrine of precedents as a matter of law. To perpetuate an error is no heroism. To rectify it is the compulsion of the judicial conscience. (Para 11)

In the present case, the effect of Order 21 Rule 13-A of the Supreme Court Rules, 1966 does not appear to have been brought to the notice of the Court passing orders on which reliance is placed by the appellants. May be that in those cases the discretion has been exercised. But that cannot have any precedential value, more particularly when it is relatable to a mandatory requirement. (Paras 9 and 13). *Mayuram Subramanian Srinivasan* v. *CBI*, (2006) 5 SCC 752: (2006) 3 SCC (Cri) 83: AIR 2006 SC 2449: 2006 Cri LJ 3285: (2006) 3 KLT 489.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 16-6-2006]

6. PRECEDENT ON FACTS

— Binding effect in cases involving similar/identical facts — Judicial discipline *See* CONSTITUTION OF INDIA — 'Article 136' — Effect of grant/dismissal of SLP — Dismissal of SLP without reasoning, Arts. 136 and 141, (2006) 1 SCC 212

7. SUPREME COURT

See CONSTITUTION OF INDIA — 'Article 141' — Precedents, Art. 141, (2006) 8 SCC 641

PRESS COUNCIL ACT, 1978

See MEDIA LAWS

PREVENTION OF CORRUPTION ACT, 1947

— S. 4 *See* PREVENTION OF CORRUPTION ACT, 1988, S. 20, (2006) 2 SCC 250

[747] — Ss. 4 and 5(2) & 5(1)(d) — Explanation of accused for accepting money — Given belatedly in statement under S. 313 CrPC and not immediately to IO — Effect — *Courts are generally slow in accepting such explanation — Mere explanation such as that the money was accepted by accused towards payment of govt. dues not sufficient — Accused must prove, either by direct evidence or on the basis of inferences legally drawn from evidence on record, his position contrary to the statutory presumption under S. 4 of acceptance of gratification by him as a motive or reward — Presumption under S. 4 would stand rebutted if the explanation proved by accused is reasonable and probable — Criminal Procedure Code, 1973, S. 313 — Prevention of Corruption Act, 1988, Ss. 20 and 13(2) r/w S. 13(1)(d)*

But for any special facts, courts are wary of accepting belated explanations given for the first time in the statement under Section 313 and not at the first available opportunity. (Para 10). *State of Maharashtra* v. *Rashid B. Mulani*, (2006) 1 SCC 407: (2006) 1 SCC (Cri) 408: AIR 2006 SC 825: 2006 Cri LJ 794: (2006) 39 AIC 65 (SC).

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 4-1-2006]

Punjabrao v. State of Maharashtra, (2002) 10 SCC 371: 2004 SCC (Cri) 1130, distinguished

— **S. 5-A** *See also* CRIMINAL TRIAL — 'Investigation', (2006) 7 SCC 172

See also PREVENTION OF CORRUPTION ACT, 1988, S. 17, (2006) 7 SCC 172

— **S. 5-A — Investigation without valid sanction — Duty of courts in case of** *See* CRIMINAL TRIAL — 'Investigation', (2006) 7 SCC 172

— **S. 5-A(1) second proviso** *See* PREVENTION OF CORRUPTION ACT, 1988, S. 17 second proviso, (2006) 7 SCC 172

[748] — **S. 5(1)(d) — Offence under — Acquittal — Propriety** — *Respondent receiving Rs 200 as bribe for payment to his boss — On such facts, held, respondent's acquittal not proper — Conviction by trial court restored* (Paras 3 and 4). *State of Rajasthan* v. *Fakir Mal*, (2005) 13 SCC 457: (2006) 2 SCC (Cri) 264.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 16-11-2005]

— **S. 5(1)(d) r/w S. 5(2)** *See* PREVENTION OF CORRUPTION ACT, 1988, S. 7 and S. 13(1)(d) r/w S. 13(2), (2006) 8 SCC 693; S. 7 and Ss. 13(1)(d) r/w S. 13(2), (2006) 8 SCC 693

[749] — **S. 5(1)(d) r/w S. 5(2) — Essential ingredients of — Mere proof of receipt of money by accused, in absence of proof of demand and acceptance of money as illegal gratification, not sufficient to establish guilt of accused** — *If accused offers reasonable and probable explanation based on evidence that the money was accepted by him, other than as an illegal gratification, accused would be entitled to acquittal — Held on facts, accused proved by preponderance of probabilities that the money was paid to him towards lease rent dues — Accordingly, trial court was justified in acquitting the accused by taking the view that prosecution failed to establish its case beyond reasonable doubt and High Court erred in taking a contrary view — Prevention of Corruption Act, 1988, S. 13(1)(d) r/w S. 13(2)*

The appellant was working as Executive Officer of a temple. According to prosecution case, PW 1 who was in occupation of some temple land approached the appellant for securing a patta in his favour in respect of the said land. The appellant allegedly demanded Rs 200 for this favour. PW 1, accompanied by PW 2 gave a complaint to PW 13, the Inspector, Vigilance and Anti-Corruption. A trap was laid. PW 1 and PW 2 went near the appellant and PW 1 gave him chemically treated currency notes of Rs 200 which he received. Necessary chemical test was conducted and the amount was recovered. On query from the Inspector PW 13, the appellant explained that PW 1 had paid the amount as due by PW 6 to the temple by way of lease arrears.

The case of the defence was as follows: PW 1 along with PW 2 came and stated that PW 6 who was due in lease amount to the temple, had requested him (PW 1) to hand over Rs 200 towards his lease rent arrears. The complainant received it and offered to give the receipt. But PW 1 told that PW 6 would himself come and collect the receipt the next day. He offered the said explanation when the Police Inspector sought his explanation immediately after the incident. According to the appellant, the complaint by PW 1 and the subsequent trap was an act of vengeance by PW 1 (in connivance with PW 2 and PW 6) in view of their nurturing enmity towards him. First reason for the enmity was the dismissal of a cousin of PW 1 who was an employee of the temple, on account of certain misconduct committed by him in pursuance of action taken by the appellant. Ever since then, PW 1 and PW 2 were nurturing a grudge against the appellant, thinking that he was responsible for the dismissal of the cousin of the appellant. The second reason was that PWs 1, 2 and 6 had committed trespass/encroachment on the temple land and the appellant as the Executive Officer had filed a case and obtained an order of injunction against them. As their attempts to illegally occupy the temple land were frustrated by the appellant, in order to wreak vengeance, the trio had hatched a conspiracy to involve him in a criminal case. The enmity was also proved by the complaints which had been given by PWs 1, 2 and 6 against the appellant to the Deputy Commissioner, Religious and Charitable Endowments, and to the Revenue Tahsildar, with a demand to transfer the appellant. PW 2 is a close friend and confidante of PW 1 and PWs 1, 2 and 6 had a common grievance against the appellant in view of the action taken by him to protect the temple land from encroachment. Neither PW 1 nor PW 2 nor PW 3 said that the appellant demanded any money as illegal gratification on the day prior to the day of taking the alleged bribe. PW 1 came to the temple office and informed the appellant that PW 6 had given him money for paying lease rent, that he had spent the amount and he would come and pay it the next day. This shows that the payment on the next day was towards the arrears due. The Special Judge, on consideration of the evidence in detail, held that the appellant had given a reasonable and satisfactory explanation for receiving Rs 200 from PW 1 in the presence of PW 2, by stating that the amount had been tendered by PW 1 as having been sent by PW 6 towards his lease rent arrears. He also held that the prosecution had failed to establish beyond reasonable doubt the three essential ingredients, namely, the demand, delivery and acceptance of the sum of Rs 200 by the appellant as illegal gratification. Consequently, the trial court acquitted the appellant.

But the High Court allowed the appeal preferred by the State. It held that the prosecution had proved

that the accused had received Rs 200 from PW 1; that the evidence of PWs 1, 2, 3 and 13 established that the said amount was received as illegal gratification in connection with grant of patta in favour of PW 1; and though the appellant was not authorised to grant patta, he had to initiate a note recommending the grant as the Executive Officer of the temple and, therefore, there was a reason for the demand, and acceptance was established; that defence case that PW 6 had sent the said amount through PW 1 towards lease rent cannot be accepted in view of PW 6 in his evidence denying that he had sent any lease rent through PW 1, though he admitted that at that time he was in arrears of lease rent in a sum of Rs 200 to Rs 500. Consequently, the High Court convicted the appellant under Section 5(1)(*d*) r/w Section 5(2) of the Prevention of Corruption Act. Taking a lenient view of the matter having regard to the facts and circumstances, it awarded the sentence of imprisonment till the rising of the court and payment of Rs 1000 as fine; and in default to undergo RI for one month. As the accused was present in court, he underwent the sentence also. The said conviction and sentence was challenged by the appellant in this appeal.

Allowing the appeal,

Held :

The evidence in this case no doubt proves that a sum of Rs 200 was paid by PW 1 to the appellant. But the crucial question is whether the appellant had demanded the said amount as illegal gratification to show any official favour to PW 1 and whether the said amount was paid by PW 1 and received by the appellant as consideration for showing such official favour. Mere receipt of Rs 200 by the appellant (admitted by the appellant) will not be sufficient to fasten guilt under Section 5(1)(*a*) or Section 5(1)(*d*) of the Act, in the absence of any evidence of demand and acceptance of the amount as illegal gratification. If the amount had been paid as lease rent arrears due to the temple or even if it was not so paid, but the accused was made to believe that the payment was towards lease rent due to the temple, he cannot be said to have committed any offence. If the reason for receiving the amount is explained and the explanation is probable and reasonable, then the appellant had to be acquitted. (Paras 15 and 12)

The High Court did not consider the explanation offered by the appellant for the receipt of the money nor the previous enmity harboured by PW 1, PW 2 and PW 6 towards the appellant. Nor did it hold that the decision of the trial court was erroneous or perverse. Reappreciating the very evidence (on which the trial court had reached the conclusion that the payment was not by way of an illegal gratification but was towards lease rent due by PW 6 and paid through PW 1), the High Court relying on the evidence of PW 1, PW 2 and PW 6 concluded that the payment was by way of illegal gratification. In particular, it relied on the denial by PW 6 that he had sent any amount through PW 1, against the appellant. But the mere denial by PW 6 that he had sent the money through PW 1 cannot be a ground to hold the appellant guilty. If PWs 1, 2 and 6 had hatched a conspiracy to involve the appellant in a criminal case, naturally PW 6 would deny having sent the amount through PW 1. The explanation given by the appellant immediately after the incident clearly explains all the circumstances and raises not only a reasonable but very serious doubt about the amount having been received by him as illegal gratification. (Para 16)

The evidence throws out a clear alternative that the accused was falsely implicated at the instance of PWs 1, 2 and 6. If two views were possible from the very same evidence, it cannot be said that the prosecution had proved beyond reasonable doubt that the appellant had received the sum of Rs 200 as illegal gratification. Thus the trial court was right in holding that the charge against the appellant was not proved and the High Court was not justified in interfering with the same. (Para 17)

Therefore, the order of the High Court is set aside and that of the trial court is restored, acquitting the appellant of the charge. (Para 18). *T. Subramanian* v. *State of T.N.*, (2006) 1 SCC 401: (2006) 1 SCC (Cri) 401: AIR 2006 SC 836: 2006 Cri LJ 804.

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 4-1-2006]

— S. 5(1)(e) r/w S. 5(2) *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 386(b)(ii) and 374, (2006) 1 SCC 697

See also EVIDENCE ACT, 1872, Ss. 92 and 91, (2006) 1 SCC 697

See also PREVENTION OF CORRUPTION ACT, 1988, S. 13(1)(e) r/w S. 13(2), (2006) 7 SCC 172

[750] — S. 5(1)(e) r/w S. 5(2) — Acquisition of assets (amounting to about Rs 4 lakhs) beyond known sources of income — Conviction for — Propriety — *Plea that Rs 2.5 lakhs was borrowed as loan from PWs 11 and 15 (moneylenders) and accused's house was given as security by way of equitable mortgage for such loan, held, was not sustainable — PWs 11 and 15 denied having lent the said amount — Equitable mortgage was a make-believe and not real as the original title deeds were not deposited — Recovery of cash from almirahs of accused, not disputed — Explanation of accused, not acceptable — Held, concurrent findings of courts below that the accused had not borrowed the said amounts and that the same was part of the ill-gotten money acquired as illegal gratification, was proper — Conviction and sentence upheld — Pre-*

vention of Corruption Act, 1988, S. 13(1)(e) r/w S. 13(2). R. Janakiraman v. *State*, (2006) 1 SCC 697: (2006) 1 SCC (Cri) 442: AIR 2006 SC 1106.

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 4-1-2006]

[751] — S. 5(1)(e) r/w S. 5(2) — Acquisition of assets beyond known sources of income — "Income" — Meaning and scope — Travelling allowance (TA) — *Held, the same is not a source of income to the government servant but only a compensation to meet his expenses — Hence, the prosecution while calculating the sources of income during the check period, need not take it into account as income — However, it is open to the government servant to lead evidence to show that he had in fact saved something out of TA — It is for the court then to accept or not whether there was such actual saving — But the question of automatically considering entire TA as a source of income does not arise — In the present case, the claim for inclusion of TA in income, was untenable — Words and phrases — "Income", "travelling allowance" — Prevention of Corruption Act, 1988, S. 13(1)(e) and Expln. r/w S. 13(2)* (Para 34). *R. Janakiraman* v. *State*, (2006) 1 SCC 697: (2006) 1 SCC (Cri) 442: AIR 2006 SC 1106.

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 4-1-2006]

C.S.D. Swamy v. State, (1960) 1 SCR 461: AIR 1960 SC 7: 1960 Cri LJ 131, followed

[752] — S. 5(2) r/w S. 5(1)(d) — Accused apprehended while accepting money pursuant to a trap — Sustainability of explanation — *Explanation of accused that money was received by him from complainant as payment towards govt. loan and not as a bribe for showing any official favour to complainant — Held on facts, not reasonable and probable — Trial court rightly convicted the accused — When material on record led to the only conclusion of guilt of accused, in absence of two possible views, High Court erred in reversing the order of conviction and acquitting the accused on benefit of doubt — Penal Code, 1860, S. 161 — Criminal Procedure Code, 1973, Ss. 374 & 386 — Prevention of Corruption Act, 1988, S. 13(2) r/w S. 13(1)(d)*

The respondent was working as Talathi of a village. The complainant and his brother *B* had taken a loan from one *K* and had secured the land owned by them in favour of *K* by way of mortgage. A mortgage suit was filed by the mortgagee which ended in compromise. The complainant then requested the respondent to delete the name of *K* from the revenue record in view of repayment of the mortgage loan in terms of the compromise. According to the prosecution case, the respondent demanded Rs 900 for this work. The complainant paid Rs 600 but the respondent insisted on payment of the balance amount of Rs 300 for doing the work. The complainant then lodged a report with the Anti-Corruption Bureau, which laid a trap. Evidence of the complainant (PW 1) shows payment of Rs 300 as illegal gratification by him and acceptance thereof by the respondent in his house. PW 2 (panch witness) who accompanied the complainant corroborated the evidence of the complainant. The defence as put forth in the cross-examination of the prosecution witnesses and the explanation given in the statement under Section 313 CrPC was as follows: some amount was outstanding from the complainant in regard to a Tagai loan taken in the name of his brother *B*. The Tahsildar sent a communication on 3-9-1986 to the respondent stating that *B* was due in a sum of Rs 2575.90 towards interest in respect of an engine loan taken in the year 1966. The accused was, therefore, instructed to recover the said amount and deposit it in the government treasury. Therefore, the accused sent a notice dated 6-9-1986 to the complainant, demanding payment of the amount due. In pursuance of it, the complainant came to the accused's house on 6-10-1986 and paid him Rs 300 towards the amount outstanding to the Government, and it was received by him as government dues and not as a bribe for showing any official favour to the complainant.

The explanation given by the accused was rejected by the Special Judge, with detailed reasons. Accepting the case of the prosecution, he convicted and sentenced the respondent herein to undergo RI for one year in regard to an offence under Section 161 IPC and RI for one year for an offence punishable under Section 5(2) read with Section 5(1)(*d*) of the Prevention of Corruption Act and to pay a fine of Rs 1000 and in default to suffer further RI for three months, with a direction that both the substantive sentences shall run concurrently. The accused filed an appeal, which the High Court allowed holding that the explanation given by the accused for receiving the amount was reasonable and probable and therefore, the charge against the accused that he had accepted Rs 300 as illegal gratification was not proved beyond doubt and that the accused was entitled to benefit of doubt.

Allowing the appeal, setting aside the order of the High Court and restoring the judgment of the Special Judge convicting the respondent,

Held :

Section 4 of the Act, *inter alia*, provided that where in any trial of an offence punishable under Section 161 IPC or Section 5(1)(*a*) or (*b*) punishable under Section 5(2) of the Act, it is proved that an accused person has accepted any gratification (other

than legal remuneration), it shall be presumed, unless the contrary is proved, that he accepted that gratification as a motive or reward, such as is mentioned in the said Section 161. This would mean that a mere explanation in the statement under Section 313 that the amount was received towards a loan will not be sufficient. The contrary position should be established by the accused either from inferences legally drawn from the evidence on record let in by the prosecution, or by letting in direct evidence in regard to the explanation. The statutory presumption raised under Section 4 will not stand rebutted merely by offering an explanation under Section 313 if such explanation does not find support from the evidence let in by the prosecution. Though, it is well settled that the accused is not required to establish his explanation by the strict standard of "proof beyond reasonable doubt", and the presumption under Section 4 of the Act would stand rebutted if the explanation or defence offered and proved by the accused is reasonable and probable, the following words of caution in *Chaturdas Bhagwandas Patel* v. *State of Gujarat* should be kept in mind before it can be said that the presumption stood rebutted: "Nevertheless, this burden on the accused is to be discharged by bringing on record evidence, circumstantial or direct, which establishes with reasonable probability, that the money was accepted by the accused, other than as a motive or reward such as is referred to in Section 161." (Paras 11 and 13)

In this case, the evidence of PW 1 (the complainant), PW 2 (panch witness) and PW 3 (Police Inspector) clearly prove the ingredients of a valid trap case. If the accused has received the money towards a government loan or at least being under a bona fide impression that it was towards repayment of the government loan, he will not be guilty. But the evidence clearly shows that no amount was due from the complainant to the State. When no amount was due from the complainant, and when the instruction of the Tahsildar was that the amount outstanding from *B* should be recovered, there is no explanation as to why the accused should send a demand notice to the complainant and not *B* on 6-9-1986. If no amount was due to the Government from the complainant, the question of the accused accepting it as payment towards a government loan does not arise. The evidence relating to demand, payment and acceptance of illegal gratification, is clear. The trial court had considered the entire evidence in detail and drawn proper inferences. (Paras 14 to 16)

Further, the notice of demand on 6-9-1986 was not sent by registered post to the complainant, nor delivered personally against acknowledgement. The notice was posted on 6-9-1986 at Pune and a certificate of posting was obtained. It is strange that the notice dated 6-9-1986, if really sent, was not posted at the place where the accused was working, but from Pune which is at a distance of about 40 km from his place of work. It is thus clear that no notice dated 6-9-1986 was issued to the complainant and the accused has tried to create an explanation by securing a certificate of posting dated 6-9-1986 from Pune after the event. (Para 16)

It is no doubt true that if two views are possible and the view of the High Court acquitting the accused cannot be said to be wholly improbable, the Supreme Court will not interfere with the decision of the High Court. But where the material on record leads to only one conclusion viz. the guilt of the accused, the judgment of the High Court will not be sustained. In this case the High Court was not justified in accepting the explanation regarding receipt of Rs 300 by the accused as being towards Tagai loan. The conclusion of guilt is inescapable. Therefore, the trial court was justified in convicting the respondent under Section 161 IPC and Section 5(2) r/w Section 5(1)(*d*) of the P.C. Act. (Para 18). *State of Maharashtra* v. *Rashid B. Mulani*, (2006) 1 SCC 407: (2006) 1 SCC (Cri) 408: AIR 2006 SC 825: 2006 Cri LJ 794: (2006) 39 AIC 65 (SC).

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 4-1-2006]

[753] — S. 5(2) r/w S. 5(1)(d) — Sentence — Mitigating circumstances considered and sentence reduced — *Penal Code, 1860, S. 161 — Prevention of Corruption Act, 1988, S. 13(2) r/w S. 13(1)(d)*

However, the incident occurred about 19 years ago. The matter was pending for about 3 years before the Special Judge, and about 8 years before the High Court and, thereafter, for 8 years before the Supreme Court. The accused was hardly 32 years old when the incident occurred and now more than 50 years old. The accused was a Talathi coming from a poor background with a family to support. In the circumstances, while restoring the conviction, the sentence is reduced from one year to four months both under Section 161 IPC and Section 5(2) read with Section 5(1)(*d*) of the Act. Both the sentences to run concurrently. (Para 19). *State of Maharashtra* v. *Rashid B. Mulani*, (2006) 1 SCC 407: (2006) 1 SCC (Cri) 408: AIR 2006 SC 825: 2006 Cri LJ 794: (2006) 39 AIC 65 (SC).

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 4-1-2006]

— **S. 6** *See also* CRIMINAL PROCEDURE CODE, 1973, S. 197, (2006) 1 SCC 294

See also PREVENTION OF CORRUPTION ACT, 1988, S 19, (2006) 1 SCC 294

— **S. 6 — Inapplicability to retired public servant — Position contrasted with that obtaining under S. 197 CrPC** *See* CRIMINAL PROCEDURE CODE, 1973, S. 197, (2006) 1 SCC 557

— **S. 6(2)** *See* PREVENTION OF CORRUPTION ACT, 1988, S. 19, (2007) 1 SCC 1

PREVENTION OF CORRUPTION ACT, 1988

— **S. 3** *See* CONSTITUTION OF INDIA, Arts. 233, 235 and 14, (2006) 6 SCC 613

— **S. 3 — Fodder Scam cases — Appointment of Special Judge in — Interference by Supreme Court** *See* CONSTITUTION OF INDIA — 'Article 32' — Public Interest Litigation/PIL, Arts. 32, 233 and 235, (2006) 6 SCC 613

[754] — **S. 4 — Allocation of cases to Special Judge — If requires consultation with High Court — Allegation that certain Special Judge was chosen to try the present case based on political vendetta — Sustainability** — *Held, Arts. 233 and 234 of the Constitution are not attracted as this is not a case where appointment of persons to be Special Judges or their postings to a particular Special Court is involved — However, expression "notwithstanding the jurisdiction of other Special Judges in the State of Punjab" in notification dated 17-11-2003 allocating cases to Special Judges was not necessary — Once a group of cases is allocated to a Special Court, consequentially other Special Courts cannot deal with them — Said expression directed to be severed — Further, Special Judges are transferred by the High Court — Hence allegation of choosing any Special Judge with oblique motive is clearly without any substance — Criminal Procedure Code, 1973, Ss. 7 and 9 — Constitution of India, Arts. 233 and 234 — Appointment or posting of Special Judges under Prevention of Corruption Act, 1988 — Primacy of High Court in process of*

Articles 233 and 234 of the Constitution are not attracted because this is not a case where appointment of persons to be Special Judges or their postings to a particular Special Court is involved. It is, however, factually conceded that the expression "notwithstanding the jurisdiction of other Special Judges in the State of Punjab" in notification dated 17-11-2003 is not necessary. Once a group of cases are allocated to a Special Court, consequentially other Special Courts cannot deal with them. Use of the aforesaid expression was really unnecessary. The said expression is considered to be severable and it is so directed. (Paras 81 and 82)

The State submitted that to avoid any fear of forum-shopping, the State is even willing to abide by the decision of the Supreme Court if the trial takes place in Chandigarh or wherever the Supreme Court directs, and to show that the State has no intention to the trial being conducted at a particular place and to prove its transparency the stand is taken. It is not considered necessary to so direct because the expression "notwithstanding the jurisdiction of other Special Judges in the State of Punjab" has already been stated to be unnecessary and would be of no consequence. That being so, the plea in that regard as raised by the appellants also fails. (Para 83). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

[755] — **Ss. 7 and 13(1)(d) — Difference between offences under** — *Held, every acceptance of illegal gratification whether preceded by a demand or not, would be covered by S. 7 — Acceptance of illegal gratification in pursuance of a demand by a public servant would also fall under S. 13(1)(d)*

Every acceptance of illegal gratification, whether preceded by a demand or not, would be covered by Section 7 of the Act. But if the acceptance of an illegal gratification is in pursuance of a demand by the public servant, then it would also fall under Section 13(1)(*d*) of the Act. The act alleged against the respondent, of demanding and receiving illegal gratification constitutes an offence both under Section 7 and under Section 13(1)(*d*) of the Act. The offence being a single transaction, but falling under two different sections, the offender cannot be liable for double penalty. But the High Court committed an error in holding that a single act of receiving an illegal gratification, where there was demand and acceptance, cannot be an offence both under Section 7 and under Section 13(1)(*d*) of the Act. As the offence is one which falls under two different sections providing different punishments, the offender should not be punished with a more severe punishment than the court could award to the person for any one of the two offences. In this case, minimum punishment under Section 7 is six months and the minimum punishment under Section 13(1)(*d*) is one year. If an offence falls under both Sections 7 and 13(1)(*d*) and the court wants to award only the minimum punishment, then the punishment would be one year. (Para 8). *State* v. *A. Parthiban*, (2006) 11 SCC 473: (2007) 1 SCC (Cri) 520: 2006 Cri LJ 4772.

Bench Strength **2**. Coram: **Arijit Pasayat** and *R.V. Raveendran*, JJ. [Date of decision: 9-10-2006]

[756] — **Ss. 7 and 13(1)(d) — Simultaneous conviction under, held, is permissible — Principles under S. 71 IPC and S. 220 CrPC, applied** — *Penal Code, 1860, S. 71 — Applicability — Criminal Procedure Code, 1973, S. 220 — Applicability*

The sentences of imprisonment in the present case shall be six months under Section 7 and one year under Section 13(2) of the Act, both the sentences to

run concurrently. So far as the levy of fine in addition made by the learned trial Judge with a default clause on two separate counts are concerned, they shall remain unaffected and are hereby confirmed. (Para 14). *State* v. *A. Parthiban*, (2006) 11 SCC 473: (2007) 1 SCC (Cri) 520: 2006 Cri LJ 4772.

Bench Strength **2**. Coram: **Arijit Pasayat** and *R.V. Raveendran*, JJ. [Date of decision: 9-10-2006]

[757] — Ss. 7 and 13(2) & (1)(d) — Punishment to be imposed for simultaneous conviction under Ss. 7 and 13(1)(d) — *Held, offender should not punished with a more severe punishment than court would award to a person for any one of the two offences — Minimum punishment of imprisonment under S. 7 being six months, and that under S. 13(1)(d) being one year, and if court wants to award only the minimum punishment, then the punishment would be one year — Hence, respondent being guilty both under Ss. 7 and 13(1)(d), sentences of imprisonment of six months under S. 7 and one year under S. 13(2), to run concurrently — Levy of fine in addition with a default clause on two counts by trial Judge in present case, confirmed — Penal Code, 1860, S. 71*

The sentences of imprisonment in the present case shall be six months under Section 7 and one year under Section 13(2) of the Act, both the sentences to run concurrently. So far as the levy of fine in addition made by the learned trial Judge with a default clause on two separate counts are concerned, they shall remain unaffected and are hereby confirmed. (Para 14). *State* v. *A. Parthiban*, (2006) 11 SCC 473: (2007) 1 SCC (Cri) 520: 2006 Cri LJ 4772.

Bench Strength **2**. Coram: **Arijit Pasayat** and *R.V. Raveendran*, JJ. [Date of decision: 9-10-2006]

[758] — S. 7 and S. 13(1)(d) r/w S. 13(2) — Conviction under — Leniency in sentence — Prayer for — *Sustainability of — Considering gigantic problem of corruption by public servants and its serious ill effects, held, lenient view could not be taken in the instant case (relating to demand and acceptance of bribe by a police officer) — Sentence of one year's RI along with fine of Rs 500 imposed by trial court, upheld — Prevention of Corruption Act, 1947, S. 5(1)(d) r/w S. 5(2)*

It is difficult to accept the prayer that a lenient view be taken in this case. The corruption by public servants has become a gigantic problem. It has spread everywhere. No facet of public activity has been left unaffected by the stink of corruption. It has deep and pervasive impact on the functioning of the entire country. Large-scale corruption retards the nation-building activities and everyone has to suffer on that count. Corruption is corroding, like cancerous lymph nodes, the vital veins of the body politics, social fabric of efficiency in the public service and demoralising the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. (Para 32). *State of M.P.* v. *Shambhu Dayal Nagar*, (2006) 8 SCC 693: (2007) 1 SCC (Cri) 1.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 2-11-2006]

[759] — S. 7 and Ss. 13(1)(d) r/w S. 13(2) — Conviction under — Setting aside of, by High Court on basis of erroneous and untenable findings — *Prosecution case as to recovery of bribe amount from upper right pocket of shirt of respondent police officer — Rejection of, by High Court mainly on grounds (i) that the said pocket was not the normal place for keeping the currency notes, (ii) that perhaps the complainant forced his currency notes in the pocket of the respondent, and (iii) that the traces of phenolphthalein powder came in the hands of the respondent due to resistance shown by him, held, was not justified — Prosecution case fully corroborated by complainant and two independent witnesses — No material to substantiate plea of false implication — Hence, High Court's judgment set aside — Conviction by trial court restored — Prevention of Corruption Act, 1947, S. 5(1)(d) r/w S. 5(2)*

According to the version of the prosecution, the respondent Police Officer came to the house of the complainant and told him that a police report was lodged against him and in that connection, the rifles of the complainant and his brother would be seized and both, the complainant and his brother, would also be arrested. The respondent told the complainant that in case Rs 5000 was paid to him, he would neither seize the rifles nor arrest them and rather the opposite party would be arrested and sent to jail. The complainant told the respondent that he would not be able to arrange Rs 5000 and he requested the respondent to settle the amount at Rs 3500. The respondent agreed to accept Rs 3500 (bribe money) on the condition that the said amount had to be arranged by the same evening. The complainant was not ready to give the bribe to the respondent and wanted to get the respondent nabbed. Therefore, the complainant went to the office of the Superintendent of Police and reported the matter. Thereafter, a trap for nabbing the respondent while accepting the bribe, was laid. The trap team reached the place where the bribe was to be given and took its position. The respondent came to that place and met the complainant. When he demanded the amount of bribe, the complainant gave Rs 3500 after taking out the same from his pocket and the respon-

dent kept the same in the right pocket of his uniform's shirt. Thereafter, the complainant passed the predecided signal as a result whereof the raiding party caught the respondent. The bribe amount was recovered from the upper right pocket of the shirt of the respondent.

During trial, considering the evidence of the prosecution witnesses, the trial court concluded that the prosecution succeeded in establishing its case against the respondent and, thus, it convicted the respondent under Sections 7 and 13(1)(*d*) read with Section 13(2) of the Prevention of Corruption Act, 1988.

In appeal, the High Court set aside the judgment of the trial court on the grounds (*i*) that the upper right pocket of the shirt was not the normal place for keeping the currency notes, (*ii*) that the said pocket could not contain 35 currency notes of denomination of Rs 100 unless the said notes were folded, (*iii*) that perhaps the complainant forced his currency notes in the pocket of the respondent, and (*iv*) that the traces of phenolphthalein powder came in the hands of the respondent due to resistance shown by him. The State being aggrieved by the said judgment filed the present appeal.

Allowing the appeal,

Held :

The respondent was convicted by the Special Judge on the basis of overwhelming evidence on record. The High Court without appreciating the facts of this case in proper perspective set aside the judgment of the Special Court. The reasoning given by the High Court for setting aside the judgment cannot be sustained. (Para 35)

The fact of recovery of Rs 3500 from the respondent has been fully corroborated by the complainant and also by two independent witnesses. In view of the evidence and documents on record, it is difficult to uphold the impugned judgment of the High Court. The High Court erroneously set aside the well-reasoned judgment of the Special Judge. (Paras 27, 31, 30, 33 and 34)

The argument that the prosecution version does not inspire any confidence because usually the bribe money is not kept in the upper pocket, is wholly untenable. Further, the accused had placed no material to substantiate his argument regarding his false implication in the present case. There is also no merit in the statement that the guns were not seized. (Paras 25, 28, 24 and 29). *State of M.P.* v. *Shambhu Dayal Nagar*, (2006) 8 SCC 693: (2007) 1 SCC (Cri) 1.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 2-11-2006]

[760] — Ss. 8, 9 and 13(1)(d) — Relative scope and applicability — Elements of offences under, analysed and contrasted — Simultaneous conviction of public servant for offences under Ss. 8, 9 and 13(1)(d) — Possibility of — *Held, offences under Ss. 8, 9 and 13(1)(d) are separate and different — Hence simultaneous conviction under all three is possible*

If Section 8 is analytically dissected then it would read as below:

(*i*) Whoever

(*ii*) accepts or obtains gratification from any person

(*iii*) for inducing any public servant (by corrupt or illegal means)

(*iv*) to render or attempt to render any services or disservice (etc.)

(*v*) with any public servant (etc.) (Para 53)

So far as Section 9 is concerned the only difference is that inducement is "by the exercise of personal influence". The above analysis shows that public servants may be involved. (Para 54)

Sections 8 and 9 of the Act correspond to Sections 162 and 163 IPC. During the currency of the old Act, Sections 161 to 165-A IPC were operating. The Supreme Court had occasion to examine Section 5(1)(*d*) of the 1947 Act and Sections 161 and 162 IPC. It has been held that they constitute different offences. (Para 55)

In view of the above, it would not be permissible to contend that a public servant would be covered by Section 13(1)(*d*) [similar to Section 5(1)(*d*) of the old Act] and therefore the public servant would not be covered by Sections 8 and 9 of the Act. The offences under Section 13(1)(*d*) and the offences under Sections 8 and 9 of the Act are different and separate. Assuming, Section 13(1)(*d*)(*i*) covers a public servant who obtain for "himself or for any other person" any valuable thing or pecuniary advantage by corrupt or illegal means, that would not mean that he would not fall within the scope of Sections 8 and 9. The ingredients are different. If a public servant accepts gratification for inducing any public servant to do or to forbear to do any official act, etc. then he would fall in the net of Sections 8 and 9. In Section 13(1)(*d*) it is not necessary to prove that any valuable thing or pecuniary advantage has been obtained for inducing any public servant. (Para 56)

Another difference is that Section 13(1)(*d*) envisages obtaining of any valuable thing or pecuniary advantage. On the other hand Sections 8 and 9 are much wider and envisage taking of "any gratification whatever". Explanation (*b*) of Section 7 is also relevant. The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money. Thus, Sections 8 and 9 are wider than Sec-

tion 13(1)(*d*) and clearly constitute different offences. (Paras 57 and 58)

Section 24 envisages the making of a statement by a person in any proceeding against the public servant for an offence under Sections 7 to 11 or Sections 13 and 15. It is clear from Section 24 that there can be a proceeding against public servant for which offence under Sections 7 to 11 which per se includes Sections 8 and 9. On the face of this provision, it cannot be contended that a public servant cannot be proceeded against under Sections 8 and 9. (Para 59)

It is the stand of the State that the appellant Parkash Singh Badal was the fulcrum around which the entire corruption was woven by the members of his family and others and it was his office of Chief Ministership which had been abused. Therefore, Sections 8 and 9 of the Act would not be applicable to him and would apply only to his wife, son and others. (Para 46). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

Ram Krishan v. State of Delhi, 1956 SCR 182: AIR 1956 SC 476: 1956 Cri LJ 837, referred to

[761] — Ss. 8 and 9 — "Gratification" in — *Held, is not restricted to pecuniary gratification — Words and Phrases — "Gratification" — Meaning*

Another difference is that Section 13(1)(*d*) envisages obtaining of any valuable thing or pecuniary advantage. On the other hand Sections 8 and 9 are much wider and envisage taking of "any gratification whatever". Explanation (*b*) of Section 7 is also relevant. The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money. Thus, Sections 8 and 9 are wider than Section 13(1)(*d*) and clearly constitute different offences. (Paras 57 and 58). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

[762] — Ss. 8 and 9 — Applicability to public servants — *Held, Ss. 8 and 9 are not restricted to private persons — Word "whoever" in Ss. 8 and 9 is very wide and covers public servants accepting gratification as a motive or reward for inducing any other public servant by corrupt or illegal means — Penal Code, 1860, Ss. 161 to 165-A [prior to their omission] — Applicability*

The opening word of Sections 8 and 9 is "whoever". The expression is very wide and would also cover public servants accepting gratification as a motive or reward for inducing any other public servant by corrupt or illegal means. Restricting the operation of the expression by curtailing the ambit of Sections 8 and 9 and confining to private persons would not reflect the actual legislative intention. (Para 52). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

— S. 12 *See* CRIMINAL PROCEDURE CODE, 1973 — 'Section 154 — FIR' — Delay in lodging/filing FIR, S. 154, (2006) 2 SCC 250

[763] — S. 12 — Conviction of appellant for offering bribe (Rs 10,000) to police officer PW 2 — Propriety — Delay in lodging FIR — Discrepancies in prosecution case — *Bribe alleged to have been given in the presence of two police constables i.e. PW 3 and U in relation to a murder case — Delay of 4 hours in lodging FIR — Improper investigation — Statement of PW 2 not recorded — Accused not arrested immediately — No explanation for non-examination of U — Doubt as to presence of PW 3 and U at the place of occurrence i.e. residence of PW 2 — Contradiction regarding mode and manner of sealing of parcel in which the amount offered was kept — On such facts, the defence story that in court PW 2 snatched Rs 10,000 from appellant and his relatives and when threatened by them that if they would not receive back the amount, the matter would be reported to the higher authorities, the instant false case was thrust upon them, held, could not be said to be wholly improbable — Appellant entitled to benefit of doubt and, therefore, acquitted*

If PW 2 was the complainant, ordinarily his statement should have been taken. In his cross-examination, the DSP accepted that he did not record the statement of PW 2 nor did he feel the necessity of reverifying the investigation done by PW 2 because he had already recorded the statement of other five witnesses and interrogated the accused. There was, thus, even no proper investigation. (Paras 12, 11 and 13)

The offence took place around 7 o' clock in the morning. The trial court noticed that the first information report was recorded around 11 o'clock and it reached the Court of the Chief Judicial Magistrate after three-and-a-half hours. The police station was about 50 yards away from the police lines where PW 2 used to reside. Further, the telephone services were available both at the civil lines as also the police station. No attempt was made by PW 2 to inform the SHO of the police station immediately. The first information report was admittedly lodged after a long delay. Having regard to the distance of the police station as well as the CIA Office, it could not be understood as to why the DSP could come to the place of occurrence only at about 11.30 a.m. and why he

remained at the spot for about three hours. (Paras 17 and 14)

The first informant and the witnesses are not ordinary people. They were Inspector and Head Constables attached to a police station. They are presumed to know the implications of a criminal case. They are, thus, also presumed to know that the first information report unless lodged at the earliest possible time may give rise to a suspicion about the correctness of the entire occurrence. (Para 21)

From the records, it appears that whereas according to PW 2, the sum of Rs 10,000 was put in a packet and sealed with GLY seal, according to PW 3 the DSP on his arrival opened the said packet, counted the money and put the same again in a packet and sealed the same. The DSP (PW 4) did not make any such statement in this behalf nor explained the discrepancies in the statements of PW 2 and PW 3. (Para 18)

No explanation was furthermore offered as to why all parties including the accused persons remained at the spot till 11.30 a.m. although no FIR was lodged. Admittedly, PW 2 although was not authorised to make any investigation, did so. The accused persons also had not allegedly been arrested but were not allowed to leave the place either. Why they were not taken immediately after the occurrence to the police station is a mystery. In a situation of this nature, the accused should have been taken to the police station immediately. (Paras 19 and 20)

That apart, out of the two witnesses in whose presence the amount was offered, *U* was not examined. The reason for his non-examination had not been explained by the prosecution. Moreover, the said witnesses although were allegedly present at the place of occurrence on official duties, the fact as to why two Head Constables at a time from the same police station would go to the residence of an Inspector at about 7 o' clock in the morning has not been disclosed. The entries in their roznamcha for going to the residence of the informant have not been produced. Admittedly, no entry in the roznamcha has been made even on their return to the police station. (Para 20)

In view of the aforementioned discrepancies in the prosecution case, the defence story set up by the appellant cannot be said to be wholly improbable. The appellant is entitled to the benefit of doubt and, thus, the judgment of conviction and sentence passed against the appellant is set aside and he is acquitted. (Paras 22 and 23). *Om Parkash* v. *State of Haryana*, (2006) 2 SCC 250: (2006) 1 SCC (Cri) 493: AIR 2006 SC 894: 2006 Cri LJ 972.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 17-1-2006]

(2005) 4 RCR 895 (P&H), reversed

[764] — S. 13 — Grant of probation for offence(s) committed under — Impermissibility — Applicability of Ss. 18 and 19, Probation of Offenders Act, 1958 ("Probation Act") — *Held, references to S. 562 CrPC, 1898 in S. 19, and to S. 5(2), Prevention of Corruption Act, 1947 in S. 18, Probation Act have to be read as references to their corresponding provisions in CrPC, 1973 and Prevention of Corruption Act, 1988 ("the Act") — Hence for conviction under S. 13(2), principles enunciated under Probation Act cannot be extended at all in view of mandate of S. 18, Probation Act — So also powers under S. 360 CrPC could not be invoked or applied at all — Hence benefit of probation afforded to respondent by High Court, set aside — Probation of Offenders — Probation of Offenders Act, 1958, Ss. 18 and 19 — Grant of probation for offence(s) committed under S. 13, Prevention of Corruption Act, 1988 — Impermissibility — Criminal Procedure Code, 1973, S. 360 — Grant of probation for offence(s) committed under S. 13, Prevention of Corruption Act, 1988 — Impermissibility — General Clauses Acts — General Clauses Act, 1897, S. 8 — Held, applicable where Prevention of Corruption Act, 1947 replaced by Prevention of Corruption Act, 1988*

Section 18 of the Probation of Offenders Act, 1958 ("the Probation Act") stipulated that it was inapplicable to offences punishable under Section 5(2) of Prevention of Corruption Act, 1947 ("the old Act"). Specific reference was made in the said Section 18 to Section 5(2) of the old Act which corresponds to Section 13 of the Prevention of Corruption Act, 1988 ("the Act"). But no change was made in the Probation Act after the Act was enacted and brought into force in 1988. Much stress was laid on the non-amendment of the Probation Act which referred to the old Act and not the present Act. The argument overlooks the principles underlying Section 8 of the General Clauses Act, 1897. When an Act is repealed and re-enacted unless a different intention is expressed by the legislature, the reference to the repealed Act would be considered as reference to the provisions so re-enacted. (Paras 9 and 4)

The references to Section 562 of the Criminal Procedure Code, 1898 ("the old Code") in Section 19 of the Probation Act and to Section 5(2) of the old Act in Section 18 of the Probation Act, respectively have to be inevitably read as references to their corresponding provisions in the newly enacted Code of Criminal Procedure, 1973 and the re-enacted Prevention of Corruption Act, 1988. Section 13(2) of the re-enacted Act is the corresponding provision to Section 5(2) of the old Act. Consequently, for the conviction under Section 13(2) of the Act of 1988 the principles enunciated under the Probation Act cannot be extended at

all in view of the mandate contained in Section 18 of the said Act. So far as Section 360 CrPC, 1973 is concerned, on and from the date of extension and enforcement of the provisions of the Probation Act to Madras, powers under Section 562 of the Old Code and after its repeal and replacement powers under Section 360 CrPC, 1973, cannot be invoked or applied at all, as has been done in the case on hand. (Paras 12 and 10)

Consequently, the Single Judge in the High Court committed a grave error in law in extending the benefit of probation even under Section 360 CrPC, 1973. (Para 14). *State* v. *A. Parthiban*, (2006) 11 SCC 473: (2007) 1 SCC (Cri) 520: 2006 Cri LJ 4772.

Bench Strength **2**. Coram: **Arijit Pasayat** and *R.V. Raveendran*, JJ. [Date of decision: 9-10-2006]

Supdt., Central Excise v. Bahubali, (1979) 2 SCC 279: 1979 SCC (Cri) 447; State v. Ratan Lal Arora, (2004) 4 SCC 590: 2004 SCC (Cri) 1353; New Central Jute Mills Co. Ltd. v. CCE, (1970) 2 SCC 820; State of Bihar v. S.K. Roy, AIR 1966 SC 1995: 1966 Cri LJ 1538, followed

— S. 13(1)(d) r/w S. 13(2) *See* PREVENTION OF CORRUPTION ACT, 1947, S. 5(1)(d) r/w S. 5(2), (2006) 1 SCC 401

— S. 13(1)(e) and Expln. r/w S. 13(2) *See* PREVENTION OF CORRUPTION ACT, 1947, S. 5(1)(e) r/w S. 5(2), (2006) 1 SCC 697

— S. 13(1)(e) r/w S. 13(2) *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 386(b)(ii) and 374, (2006) 1 SCC 697

See also EVIDENCE ACT, 1872, Ss. 92 and 91, (2006) 1 SCC 697

See also PREVENTION OF CORRUPTION ACT, 1947, S. 5(1)(e) r/w S. 5(2), (2006) 1 SCC 697

[765] — S. 13(1)(e) r/w S. 13(2) — Acquisition of property by accused disproportionate to his known sources of income — Property in name of accused and his wife — *Conviction by trial court taking the view that except one son, no other sons of accused made contributions to their parents from their income — Setting aside of, by High Court — Propriety of — Illegal and unfair investigation — Non-examination of important witnesses and non-consideration of relevant documentary evidence by IO — No explanation therefor — Failure of IO to ascertain correctness of status of accused and his wife before Income Tax Department — Further, non-production of relevant statements of accused and his wife and sons before court — Sanction for prosecution invalid — Investigation carried out without requisite authorisation under the PC Act — Considering these facts, held, judgment of High Court not liable to be interfered with — Prevention of Corruption Act, 1947, S. 5(1)(e) r/w S. 5(2)*

The respondent was an Assistant Station Master. All the three sons of the respondent had been working. A raid was conducted in his house and also in the houses of his sons. Some incriminating documents were allegedly recovered. According to the prosecution, the respondent was in possession of assets and pecuniary resources (in his own name as also in the name of his wife) disproportionate to his known sources of income during the relevant period.

During the trial, the respondent examined defence witnesses, including his wife (DW 1) and his three sons i.e. DWs 2, 3 and 4. The trial court opined that the sons of the respondent, other than his eldest son, did not make any contribution to their parents from their salaries. The trial court convicted and sentenced the respondent under Section 13(2) of the Prevention of Corruption Act, 1988. In appeal, the High Court set aside the said judgment. Keeping in view the societal norms prevailing in India, the High Court opined that the sons of the respondent made substantial contribution from their income to their parents. The High Court also relied upon a large number of decisions of the Supreme Court in coming to the conclusion that if a reasonable margin of 10% is accorded, the respondent could not be said to have failed to have proved in showing means for acquiring assets held and possessed by him as also by his wife. Aggrieved by the said judgment of the High Court, the State preferred the present appeal.

Dismissing the appeal,

Held :

The Investigating Officer (PW 41) did not produce any record to show that he had been authorised under the second proviso to Section 17 of the Prevention of Corruption Act, 1988 to conduct investigation. The trial Judge furthermore also committed a serious error insofar as he failed to take into consideration that PW 37 was not competent to accord sanction for prosecution of the respondent. (Paras 13 and 22)

Illegality apart, the manner in which the investigation was conducted, is condemnable. The evidence of PW 41 raises doubts about his *bona fides*. Why he did not examine important witnesses and as to why he had not taken into consideration the relevant documentary evidence has not been explained. He did not even care to ascertain the correctness or otherwise of the status of both the respondent and his wife before the Income Tax Department. Above all, he did not produce before the court the statements made by the respondent, his wife and those of his sons, although they were relevant. Had the statements of DW 3 and DW 4 been produced before the trial Judge, the said Judge might not have opined that the sons of the respondent, other than DW 2, did not make any contribution to their parents at all. If such statements were made by the said witnesses before the investigating officer, omission on the part of the wife of the respondent to state the same before the trial Judge might have taken a back

seat and the statements of other sons of the respondent, namely, DW 3 and DW 4 might not have been ignored by the trial Judge. (Para 19)

For the reasons aforementioned, the impugned judgment need not be interfered with. (Para 27). *State Inspector of Police* v. *Surya Sankaram Karri*, (2006) 7 SCC 172: (2006) 3 SCC (Cri) 225.

Bench Strength 2. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 24-8-2006]

— S. 13(2) r/w S. 13(1)(d) *See* PREVENTION OF CORRUPTION ACT, 1947, S. 5(2) r/w S. 5(1)(d), (2006) 1 SCC 407

[766] — S. 13(2) r/w S. 13(1)(e) — Acquisition of assets disproportionate to known source of income — Joint possession — Effect of other party claiming ownership/contribution — *Accused public servant and his wife living together — Prosecution discharged its initial burden by proving recovery of unaccounted for money and other assets from premises jointly in possession of accused and his wife — Accused on his part satisfactorily establishing that the monies and assets recovered belonged to his wife which she amassed from the businesses run by her separately — In absence of any evidence that the assets belonged to the accused, held, he cannot be held liable under PC Act for such assets*

The accused, a senior IAS officer, was charged for offence punishable under Section 13(2) r/w Section 13(1)(*e*) of the Prevention of Corruption Act. According to the prosecution, pursuant to raids by the Income Tax Department in the house of the accused, huge amount of cash, some gold biscuits, foreign exchange i.e. dollars, certain documents regarding purchase of immovable properties and fixed deposit receipts of a bank were recovered. The prosecution established by several witnesses including the investigating officer, senior managers of the bank, persons against whose names the amounts were deposited, officers of the Income Tax Department that the monies and assets recovered belonged to the accused. The accused on the other hand pleaded that the monies and assets belonged to his wife. He examined 13 witnesses including himself, his wife and his son-in-law. His wife admitted that she amassed the wealth from the businesses run by her by selling cycle rims and leather products without any bill and out of the money amassed by her she had persuaded her husband to deposit the same at various banks. She also accounted for the foreign exchange recovered. She further explained that she had purchased the gold ornaments. She also submitted that some real estate was purchased out of self-earning as well as the loan from the mother of the son-in-law and some contribution was made by the son-in-law which the son-in-law also admitted. Likewise, her son-in-law also appeared in the witness box and admitted that he had saved certain foreign exchange when he had gone on various visits abroad. He also admitted to have carried some money to be deposited in the bank. The accused appeared as witness and deposed that all the monies belonged to his wife and when he came to know about the unaccounted for money at his house, he gave a piece of his mind to her. He admitted that on one or two occasions the money was carried by himself to be deposited in the account in the bank and some money was also deposited on account of some of the members of the family by the son-in-law. In the circumstances, the question was whether the accused could be saddled with all the unaccounted for money at his hand or not and whether the joint possession of the premises by the husband and wife and the unaccounted for money which had been recovered from the house could be said to be in exclusive possession of the accused. The Special Judge found the accused guilty and convicted and sentenced him to one year's RI and fine of Rs 5000, in default three months' imprisonment. But in appeal, Single Judge of the High Court acquitted the accused of the aforesaid charges.

Dismissing the appeal,

Held :

The initial burden was on the prosecution to establish whether the accused had acquired the property disproportionate to his known source of income or not. In this case the prosecution has tried to establish that all the monies belonged to the accused and after taking sanction, prosecution was launched against the accused. At the same time, the accused has to account for the money in his hand satisfactorily and satisfy the court that his explanation was worthy of acceptance. In this case, the accused-respondent has explained the possession of the unaccounted for money. (Paras 16 and 15)

The question is, when the accused has provided satisfactory explanation that all the money belonged to his wife and she has owned it and the Income Tax Department has assessed it in her hand, then, in that case, whether he could be charged under the Prevention of Corruption Act. It is true that when there is joint possession between the wife and husband, or father and son and if some of the members of the family are involved in amassing illegal wealth, then unless there is categorical evidence to believe that this can be read in the hands of the husband or as the case may be, it cannot be fastened on the husband or the head of the family. It is true that the prosecution in the present case has tried its best to lead evidence to show that all these monies belonged to the accused but when the wife has fully owned the entire money and the other wealth earned by her by not showing in the income tax returns and she has accepted the whole responsibility, in that case it is very difficult to hold the accused

guilty of the charge. It is very difficult to segregate that how much of the wealth belonged to the husband and how much belonged to the wife. The prosecution has not been able to lead evidence to establish that some of the money could be held in the hands of the accused. In case of joint possession it is very difficult when one of the persons accepts the entire responsibility. The wife of the accused has not been prosecuted and it is only the husband who has been charged being a public servant. In view of the explanation given by the husband and when it has been substantiated by the evidence of the wife, the other witnesses who have been produced on behalf of the accused, coupled with the fact that the entire money has been treated in the hands of the wife and she has owned it and she has been assessed by the Income Tax Department, it will not be proper to hold the accused guilty under the Prevention of Corruption Act as his explanation appears to be plausible and justifiable. The burden is on the accused to offer plausible explanation and in the present case he has satisfactorily explained that the whole money which has been recovered from his house does not belong to him and that it belonged to his wife. Therefore, he has satisfactorily accounted for the recovery of the unaccounted for money. Since the crucial question in this case was of possession and the premises in question were jointly shared by the wife and the husband and the wife having accepted the entire recovery at her hand, it will not be proper to hold the husband guilty. Therefore, in these circumstances, the view taken by the High Court appears to be justified and there are no compelling circumstances to reverse the order of acquittal. (Para 17). *DSP* v. *K. Inbasagaran*, (2006) 1 SCC 420: (2006) 1 SCC (Cri) 325: AIR 2006 SC 552: (2006) 1 MPLJ 512: (2006) 2 Mah LJ 399: (2006) 282 ITR 435.

Bench Strength **2**. Coram: *B.N. Agrawal* and **A.K. Mathur**, JJ. [Date of decision: 7-12-2005]

— S. 17 *See* CRIMINAL TRIAL — 'Investigation', (2006) 7 SCC 172

[767] — S. 17 — *Non obstante* clause occurring in, held, makes investigation only by police officers of the ranks specified therein to be imperative in character — *Interpretation of Statutes — Internal aids — Non obstante clause — Prevention of Corruption Act, 1947, S. 5-A* (Para 13). *State Inspector of Police* v. *Surya Sankaram Karri*, (2006) 7 SCC 172: (2006) 3 SCC (Cri) 225.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 24-8-2006]

[768] — S. 17 — Improper conferment of jurisdiction on certain police stations — *Allegation of — Unsustainability on facts — Police — Police Act, 1861, Ss. 1 to 3*

So far as conferment of jurisdiction with the police station over the whole State is concerned, it appears that the same was created on 31-10-1994 by the then Government of Chandigarh and by order dated 20-4-1995 the office of Superintendent of Police, Vigilance Flying Squad-I/Criminal Investigation Agency, Chandigarh was shifted to Police Station Mohali. This order continued to operate subsequently. As rightly contended a fresh notification was issued creating some more police stations qua other districts. PS Mohali falls within Ropar District and within the area of Special Judge, Ropar as was specified in consultation with the Punjab and Haryana High Court. The Special Judges are transferred by the High Court and, therefore, the allegation of choosing any Special Judge with oblique motive is clearly without any substance. The notification regarding the reorganisation of the police station with Police Station Mohali having jurisdiction over the whole State of Punjab was notified on 19-12-2002. (Para 75). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

— S. 17 — Investigation without valid sanction — Duty of courts in case of *See* CRIMINAL TRIAL — 'Investigation', (2006) 7 SCC 172

[769] — S. 17 second proviso — Provision under, that investigation in offence not to be carried out without authorisation by police officer not below the rank of Superintendent of Police — *Challenge to investigation on ground of non-fulfilment of said requirement — Burden of proof in relation to — Held, was on prosecution — Investigating officer in the present case failed to produce any record to show that he had been granted the aforesaid authorisation — Evidence Act, 1872, Ss. 101 & 103 — Prevention of Corruption Act, 1947, S. 5-A(1) second proviso* (Paras 13 and 14). *State Inspector of Police* v. *Surya Sankaram Karri*, (2006) 7 SCC 172: (2006) 3 SCC (Cri) 225.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 24-8-2006]

[770] — S. 17 second proviso — Provision under, that investigation in offence not to be carried out without authorisation by police officer not below the rank of Superintendent of Police — Nature of — *Held, is mandatory in character — Prevention of Corruption Act, 1947, S. 5-A(1) second proviso*

The second proviso appended to Section 17 of the Prevention of Corruption Act, 1988 provides that an offence referred to in clause (*e*) of sub-section (1) of Section 13, shall not be investigated without the order of a police officer not below the rank of a Superinten-

dent of Police. Authorisation by a Superintendent of Police in favour of an officer so as to enable him to carry out investigation in terms of Section 17 of the Act is a statutory one. The power to grant such sanction has been conferred upon the authorities not below the rank of a Superintendent of Police. The proviso uses a negative expression. It also uses the expression "shall". *Ex facie* it is mandatory in character. (Para 13). *State Inspector of Police* v. *Surya Sankaram Karri*, (2006) 7 SCC 172: (2006) 3 SCC (Cri) 225.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 24-8-2006]

[771] — S. 17 second proviso — Order by Superintendent of Police authorising a police officer to conduct investigation, held, was required to be passed in writing

The approach of the trial Judge (while dealing with the contention of the accused regarding failure of the prosecution to produce orders of the Superintendent of Police authorising to take up investigation) was not correct. When a statutory functionary passes an order, that too authorising a person to carry out a public function like investigation into an offence, an order in writing was required to be passed. A statutory functionary must act in a manner laid down in the statute. Issuance of an oral direction is not contemplated under the Act. Such a concept is unknown in administrative law. The statutory functionaries are enjoined with a duty to pass written orders. (Para 16). *State Inspector of Police* v. *Surya Sankaram Karri*, (2006) 7 SCC 172: (2006) 3 SCC (Cri) 225.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 24-8-2006]

— S. 19 *See* CRIMINAL PROCEDURE CODE, 1973, S. 197, (2006) 1 SCC 294

[772] — S. 19 — Absence of sanction vis-à-vis vitiation of sanction order — Question of — Stages of trial at which to be raised — *Held, question as to absence can be agitated at threshold of trial, but question as to vitiation has to be raised during trial*

The sanction in the instant case related to the offences relatable to the 1988 Act. There is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial. (Para 48). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

[773] — S. 19 — Grant of sanction under — Nature of exercise involved — Position contrasted with that obtaining under S. 197 CrPC — *Held, in cases covered under the PC Act, 1988 sanction is of automatic nature and thus factual aspects are of little or no consequence — Conversely, in a case relatable to S. 197 CrPC, the substratum and basic features of the case have to be considered to find out whether the alleged act has any nexus with the discharge of official duties — Reason therefor, explained — Criminal Procedure Code, 1973, S. 197*

Section 197 CrPC and Section 19 of the PC Act, 1988 operate in conceptually different fields. In cases covered under the PC Act, 1988 in respect of public servants the sanction is of automatic nature and thus factual aspects are of little or no consequence. Conversely, in a case relatable to Section 197 CrPC, the substratum and basic features of the case have to be considered to find out whether the alleged act has any nexus with the discharge of duties. Position is not so in case of Section 19 of the PC Act, 1988. The reason is obvious. (Para 10). *Lalu Prasad* v. *State of Bihar*, (2007) 1 SCC 49: (2007) 1 SCC (Cri) 241.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

[774] — S. 19 — Grant or refusal of sanction — Proper mode and manner for — *Order of, held, must be preceded by application of mind on the part of the appropriate authority — If the complainant or the accused can demonstrate such an order to be suffering from non-application of mind, the same may be called in question before a competent court of law — Prevention of Corruption Act, 1947, S. 6 — Criminal Procedure Code, 1973, S. 197* (Para 14). *Romesh Lal Jain* v. *Naginder Singh Rana*, (2006) 1 SCC 294: (2006) 2 SCC (Cri) 593: AIR 2006 SC 336: 2005 Cri LJ 5068.

Bench Strength **2**. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 28-10-2005]

[775] — S. 19 — Import of sub-section (2) of S. 19 — *Held, the same relates to doubt about authority to grant sanction and not whether sanction is necessary — Prevention of Corruption Act, 1947, S. 6(2)*

In Section 6(2) of the old Act [Section 19(2) of the Act] question relates to doubt about authority to grant sanction and not whether sanction is necessary. (Para 29). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

[776] — S. 19 — Lack of sanction for prosecution by competent authority — *Prior to 23-4-1994, Secretary (Vigilance) was not competent to accord sanction — Considering that sanction was granted by him in present case prior to 23-4-1994, held, appellant's conviction not sustainable — Appellant acquitted of the charges — Prevention of Corruption*

Act, 1947, S. 6 (Para 2). *K. Devassia* v. *State of Kerala*, (2006) 10 SCC 447: (2006) 3 SCC (Cri) 577.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 29-3-2006]

P.A. Mohandas v. State of Kerala, (2003) 9 SCC 504: 2004 SCC (Cri) 1176, followed

[777] — **S. 19 — Nature of immunity under — Effect of sub-sections (3) and (4) of S. 19** — *Effect of mere error, omission or irregularity in sanction, held, is not considered fatal unless it has resulted in, or failure of justice has been occasioned thereby — Requirement of sanction under S. 19(1) is a matter of procedure and does not go to the root of the jurisdiction*

The effect of Sections 19(3) and (4) of the Act is of considerable significance. In Section 19(3) the stress is on "failure of justice" and that too "in the opinion of the court". In Section 19(4), the stress is on raising the plea at the appropriate time. Significantly, the "failure of justice" is relatable to error, omission or irregularity in the sanction. Therefore, mere error, omission or irregularity in sanction is not considered fatal unless it has resulted in failure of justice or has been occasioned thereby. Section 19(1) is a matter of procedure and does not go to the root of jurisdiction. Section 19(3)(*c*) reduces the rigour of prohibition. In Section 6(2) of the old Act [Section 19(2) of the Act] question relates to doubt about authority to grant sanction and not whether sanction is necessary. (Para 29). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

[778] — **S. 19 — Person that may grant sanction under — Burden of proof in case of challenge to authority of person passing sanction order** — *Held, person competent under law to represent the Govt. concerned may pass the sanction order — Burden of challenging the same is heavy on the party challenging the authority of such person*

In a case where it is seen that a sanction order has been passed by an authority who is competent under the law to represent the State Government, the burden is heavy on the party who challenges the authority of such order to show that the authority competent to pass the order of sanction is somebody else and not the officer who has passed the sanction order in question. (Para 12). *Lalu Prasad* v. *State of Bihar*, (2007) 1 SCC 49: (2007) 1 SCC (Cri) 241.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

Shivendra Kumar v. State of Maharashtra, (2001) 9 SCC 303: 2002 SCC (Cri) 564, followed

[779] — **S. 19 — Sanction for prosecution granted by a person not authorised in law — Validity of** — *Held, it being without jurisdiction, would be a nullity — PW 37 was not competent to accord sanction for prosecution of respondent — Nothing to show that he was delegated with power to accord sanction — Hence, grant of sanction by him was vitiated in law — Prevention of Corruption Act, 1947, S. 6 — Criminal Procedure Code, 1973, S. 197* (Paras 26, 22 and 23). *State Inspector of Police* v. *Surya Sankaram Karri*, (2006) 7 SCC 172: (2006) 3 SCC (Cri) 225.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 24-8-2006]

[780] — **S. 19 — Sanction for prosecution in case public servant is no longer holding the post/office during the currency of which the alleged offence was committed — Need for** — *Applying* Parkash Singh Badal case, *(2007) 1 SCC 1, appeal dismissed and view of High Court holding that there was no need for sanction in such a case, upheld* (Paras 4 and 11). *K. Karunakaran* v. *State of Kerala*, (2007) 1 SCC 59: (2007) 1 SCC (Cri) 251.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

R.S. Nayak v. A.R. Antulay, (1984) 2 SCC 183: 1984 SCC (Cri) 172; Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1, followed

[781] — **S. 19 — Sanction for prosecution in case public servant is no longer holding the post/office during the currency of which the alleged offence was committed — Need for** — *Held, following* Antulay case, *(1984) 2 SCC 183, there is no such need — The word "office" repeatedly used in S. 19 means the "office" which the public servant misuses or abuses by corrupt motive for which he is to be prosecuted — The question of obtaining sanction is relatable to the time of holding the office when the offence was alleged to have been committed — In present case, at the relevant time when the charge-sheet was filed, as the petitioner was not holding the office in which he was alleged to have committed the offences (though he was holding another office), there was no question of obtaining any sanction. Balakrishnan Ravi Menon* v. *Union of India*, (2007) 1 SCC 45: (2007) 1 SCC (Cri) 237.

Bench Strength **2**. Coram: *M.B. Shah* and *D.M. Dharmadhikari*, JJ. [Date of decision: 17-9-2002]

R.S. Nayak v. A.R. Antulay, (1984) 2 SCC 183: 1984 SCC (Cri) 172, affirmed and followed

[782] — **S. 19 — Sanction for prosecution in case public servant is no longer holding the post/office during the holding of which the alleged offence was committed — Need for** — *Position obtaining*

under S. 19 contrasted with that obtaining under S. 197 CrPC — Held, there is no need for sanction under S. 19 in the abovestated situation while sanction is required under S. 197 CrPC in such a situation — The difference in the positions is not the result of a casus omissus and S. 19, PC Act, 1988 and S. 197 CrPC operate in conceptually different fields — Criminal Procedure Code, 1973, S. 197 — Sanction for prosecution in case public servant is no longer holding the post/office during the currency of which the alleged offence was committed — Need for — Position obtaining under S. 197 contrasted with that obtaining under S. 19 PC Act, 1988

Section 197 CrPC and Section 19 of the PC Act, 1988 operate in conceptually different fields. In cases covered under the PC Act, 1988 in respect of public servants the sanction is of automatic nature and thus factual aspects are of little or no consequence. Conversely, in a case relatable to Section 197 CrPC, the substratum and basic features of the case have to be considered to find out whether the alleged act has any nexus with the discharge of duties. Position is not so in case of Section 19 of the PC Act, 1988. The reason is obvious. The sanction contemplated in Section 197 CrPC concerns a public servant who "is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty", whereas the offences contemplated in the PC Act, 1988 are those which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties. Parliament must have desired to maintain the distinction and hence the wording in the corresponding provision in the PC Act, 1947 was materially imported into the new PC Act, 1988 without any change in spite of the change made while enacting Section 197 CrPC. (Paras 10 and 9)

Hence, the plea that the effect of the Law Commission's Forty-first Report which recommended extending the protection of sanction under Section 197 CrPC to a retired public servant as well should have been also extended to Section 19(1) of the PC Act, 1988, and Dr. Bakshi Tekchand's Report has not been considered by the legislature, and therefore this is a case of "casus omissus", is clearly without any substance. (Para 9). *Lalu Prasad* v. *State of Bihar*, (2007) 1 SCC 49: (2007) 1 SCC (Cri) 241.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

Kalicharan Mahapatra v. State of Orissa, (1998) 6 SCC 411: 1998 SCC (Cri) 1455, followed

R.S. Nayak v. A.R. Antulay, (1984) 2 SCC 183: 1984 SCC (Cri) 172, held, affirmed

[783] — S. 19 — Sanction for prosecution in case public servant is no longer holding the same post/office during the currency of which the alleged offence was committed — Need for — Significance of the word "is" in S. 19(1) — Position obtaining under S. 19 contrasted with that obtaining under S. 197 CrPC in this regard — *Object of immunity conferred under S. 19 — Held, following* A.R. Antulay, *(1984) 2 SCC 183, there is no need to obtain sanction for prosecution of a person, alleged to have committed offence(s) in the capacity of a public servant, where cognizance of such offence(s) is taken after he had already ceased to hold the office in question, though he may continue to be a public servant in any other capacity at the time of taking cognizance — S. 19(1) is time and offence related — In present case, it being found that public servant in question had ceased to be a public servant since he had ceased to hold the office where the alleged offence was committed, question as to non-application of mind, etc. in grant of sanction had become academic*

The relevant date with reference to which a valid sanction is sine qua non for taking cognizance of an offence committed by a public servant as required by Section 19 is the date on which the court is called upon to take cognizance of the offence of which he is accused. (Para 16)

The use of the expression "is" in Section 19 of the Prevention of Corruption Act, 1988 ("the Act") vis-à-vis the expression "is" or "was" used in Section 197 CrPC, 1973 is indicative of the legislative intent. Though certain changes were incorporated while enacting Section 197 CrPC no corresponding change was made in the 1988 Act. (Paras 10 to 15)

The principle of immunity protects all acts which the public servant has to perform in the exercise of the functions of the Government. The purpose for which they are performed protects these acts from criminal prosecution. However, there is an exception. Where a criminal act is performed under the colour of authority but which in reality is for the public servant's own pleasure or benefit then such acts shall not be protected under the doctrine of State immunity. So where the act performed under the colour of office is for the benefit of the officer or for his own pleasure Section 19(1) will come in. Therefore, Section 19(1) is time and offence related. (Paras 20 and 21)

It was contended that even if the offending act is committed by a public servant in his former capacity and even if such a public servant has not abused his subsequent office still such a public servant needs protection of Section 19(1) of the Act throughout, as long as he continues to be in public employment, and that the judgment of the Supreme Court in *R.S. Nayak case*, (1984) 2 SCC 183, holding that the subsequent position of the public servant to be unprotected, was

erroneous. This contention is clearly untenable as Section 19(1) of the Act is time and offence related. (Paras 23 and 24)

Protection to public servants under Section 19(1) has to be confined to the time-related criminal acts performed under the colour or authority for public servant's own pleasure or benefit as categorised under Sections 7, 10, 11, 13 and 15. This is the principle behind the test propounded by the Supreme Court, namely, the test of abuse of office. (Para 26)

So far as the question about the non-application of mind in the sanction or absence of sanction in the present case is concerned, this has been answered in the first question i.e. where the public servant has ceased to be a public servant since he has ceased to hold the office where the alleged offence is supposed to have taken place, the other questions really become academic. (Para 39)

The five clauses contained in Section 13(1) of the 1988 Act represent different types of infraction under which the offence can be said to have been committed. If there is material to show that the alleged offence falls in any of the aforesaid categories, it is not necessary at the stage of filing of the charge-sheet to specify as to which particular clause covers the alleged offence. It is the stand of the respondent State that clauses (*a*), (*b*), (*d*) and (*e*) are all attracted and not clause (*c*). Therefore, the sanctioning authority has rightly referred only to Section 13(1) and that does not make the sanction order vulnerable. (Para 46). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

R.S. Nayak v. A.R. Antulay, (1984) 2 SCC 183: 1984 SCC (Cri) 172; S.A. Venkataraman v. State, AIR 1958 SC 107: 1958 Cri LJ 254; P.V. Narasimha Rao v. State (CBI/SPE), (1998) 4 SCC 626: 1998 SCC (Cri) 1108, followed

[784] — S. 19 — Sanction for prosecution in case public servant is no longer serving in the same capacity as when offence in question was allegedly committed — Need for — *In light of judgment rendered in* K. Karunakaran case, *(2007) 1 SCC 59, petition dismissed. V.S. Achuthanandan* v. *State of Kerala*, (2007) 1 SCC 61: (2007) 1 SCC (Cri) 253.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

[785] — S. 19 — Sanction for prosecution in relation to offences under PC Act and IPC — When sanction accorded amounts to a "composite sanction" — Test to determine — *Held, for the sanction order to amount to a composite order there must be an immediate or proximate connection between PC Act and IPC offences for which accused is charged — The test to be applied in such a case would be whether the offences under IPC are also required to be proved in relation to the offences under the PC Act — Criminal Procedure Code, 1973, S. 197 — Prevention of Corruption Act, 1947, S. 6*

The accused *R* was charged with offences under Sections 409, 167, 218, 419, 420, 465, 463 and 471 IPC and under Section 13(*d*), Prevention of Corruption Act, 1988.

Held :

It is not in dispute that the Deputy Inspector General of Police was the competent authority for grant of sanction as against the respondent *R* in terms of the provisions of the 1988 Act. The State, thus, could not have interfered with that part of the said order whereby requisite sanction had been granted under the 1988 Act. The contention to the effect that the order of sanction passed by the Deputy Inspector General of Police was a composite one and, thus, the State could cancel the same, is unacceptable. Offences under the Penal Code and offences under the 1988 Act are different and distinct. On the face of the allegations made against *R*, they do not have any immediate or proximate connection. The test which is required to be applied in such a case is as to whether the offences for one reason or the other punishable under the Penal Code are also required to be proved in relation to offences punishable under the 1988 Act. If the answer to the said question is rendered in the negative, the same test can be applied in relation to a matter of sanction. (Para 12). *Romesh Lal Jain* v. *Naginder Singh Rana*, (2006) 1 SCC 294: (2006) 2 SCC (Cri) 593: AIR 2006 SC 336: 2005 Cri LJ 5068.

Bench Strength **2**. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 28-10-2005]

[786] — S. 19 — Sanction order — Proper application of mind — Requirements of — *Held, law requires that before the sanctioning authority materials must be placed so that it can apply its mind and take a decision — Whether there is application of mind would depend on facts and circumstances of each case and there cannot be any generalised guidelines in this regard*

The sanctioning authority is not required to separately specify each of the offences against the accused public servant. This is required to be done at the stage of framing of charge. The law requires that before the sanctioning authority materials must be placed so that the sanctioning authority can apply its mind and take a decision. Whether there is an application of mind or not would depend on the facts and circumstances of each case and there cannot be any generalised

guidelines in that regard. (Para 47). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

— S. 19 — Inapplicability to retired public servant — Position contrasted with that obtaining under S. 197, CrPC *See* CRIMINAL PROCEDURE CODE, 1973, S. 197, (2006) 1 SCC 557

[787] — Ss. 19 and 13 — Sanction order — Detail necessary with respect to the offences alleged — *Held, sanctioning authority is not required to separately specify each of the offences against the accused public servant — This is required to be done at the stage of framing of charge — In present case, most of the offences under various clauses of S. 13(1) alleged to have been committed, it was sufficient for sanction order to mention only S. 13(1) — It was not necessary to have mentioned each separate clause thereof which was attracted — Criminal Procedure Code, 1973, Ss. 215 and 228*

The sanctioning authority is not required to separately specify each of the offences against the accused public servant. This is required to be done at the stage of framing of charge. The law requires that before the sanctioning authority materials must be placed so that the sanctioning authority can apply its mind and take a decision. Whether there is an application of mind or not would depend on the facts and circumstances of each case and there cannot be any generalised guidelines in that regard. (Para 47). *Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2006]

— Ss. 19 and 13(2) *See* CRIMINAL PROCEDURE CODE, 1973, S. 197, (2006) 1 SCC 294

[788] — S. 20 — Applicability — *Where demand not proved, held, S. 20 will have no application — Present one not a case where burden of proof was on the accused in terms of S. 20 — Prevention of Corruption Act, 1947, S. 4* (Para 22). *Om Parkash* v. *State of Haryana*, (2006) 2 SCC 250: (2006) 1 SCC (Cri) 493: AIR 2006 SC 894: 2006 Cri LJ 972.

Bench Strength 2. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 17-1-2006]

— Ss. 20 and 13(2) r/w S. 13(1)(d) *See* PREVENTION OF CORRUPTION ACT, 1947, Ss. 4 and 5(2) & 5(1)(d), (2006) 1 SCC 407

— S. 22 — Powers of investigation of CBI in respect of offences under PC Act — Norms governing *See* PUBLIC ACCOUNTABILITY AND VIGILANCE — 'Vigilance Authorities' — CBI, (2007) 1 SCC 110

— S. 22 — Question whether accused/cases to be sent to Magistrate/Special Judge by CBI — Determination of — Referral of matter to Attorney General for India — Requirements of *See* PUBLIC ACCOUNTABILITY AND VIGILANCE — 'Vigilance Authorities' — CBI, (2007) 1 SCC 110

— Ss. 27, 5 and 13(1)(e) — Fodder Scam cases — Conduct of proceedings — Interference by Supreme Court in *See* CONSTITUTION OF INDIA — 'Article 32' — Public Interest Litigation/PIL, Art. 32, (2006) 6 SCC 613

PREVENTION OF TERRORISM ACT, 2002

[789] — Ss. 4(a) and (b) — Relative scope and applicability — *Held, if the weapon falls in S. 4(b), then irrespective of whether it falls under S. 4(a), it would not be excluded from the purview of S. 4(b) — Further, qualification of the area being a notified one not required under S. 4(b) — On facts, huge cache of arms and explosives recovered from house of accused, including an AK-56 rifle — Prosecution under S. 4(b) if warranted — Held, the very fact of keeping huge quantity of explosives in the house without a licence, on face of it is hazardous — These explosives are capable of creating havoc if used to prepare a bomb, and the same cannot be played down simply because bomb disposal squad report said that they were of low intensity — Hence recovery of such substances clearly showed that case of accused was covered by S. 4(b), though not S. 4(a), as on said date, area concerned was not notified — Further, possession of AK-56 rifle in unauthorised manner, said rifle being capable of mass destruction, is itself an offence under S. 4(b) — Hence prosecution against accused persons can proceed under Ss. 3(3) and 4(b) — Words and phrases — "Hazardous", "lethal weapon"*

Police officials raided the house of one Udai Pratap Singh for execution of a warrant of arrest in Crime No. 55 of 1993 under Sections 2/3 of the Gangsters Act pending before the Special Judge, Allahabad. In the course of the raid they found Udai Pratap Singh present in his home where he was standing with one AK-56 rifle with a black colour belt hanging on his right shoulder. The weapon was in perfect condition, and on his shoulder there was a bag with three pieces of magazines of the AK-56 rifle. After unloading the AK-56 rifle they found 36 bullets. When he was asked to produce the licence, he could not show anything nor was he ready to tell them how he had acquired all these items. When they entered his bedroom they found a large number of bullets of various bores. After that they found a square wooden box in yellow-coloured polythene bag which contained in it about 200 gm of explosive chips and in grey-coloured polythene bag there was some suspicious black powder. In a white cotton bag there was a blue-coloured polythene bag which contained nearabout 400 gm suspicious brown-coloured powder. They further raided the mango gardens of Udai Pratap Singh wherein they discovered three green polythene bags

and also found a large number of guns and rifles of various makes and bores, swords, hatchets, spears, axes and knives. This huge cache of arms was recovered in the raid by the police on 25/26-1-2003. On the basis of this, the State Government granted permission to launch prosecution under Section 50 of POTA to prosecute the accused persons under Sections 3(2), 3(3), 3(7) and 4 of POTA.

After this order was passed by the State Government against the accused persons, political events took a turn. A new regime came to power. This regime after assuming power revoked the order. Meanwhile the accused had also filed a review petition under Section 60 of POTA before the Review Committee appointed under POTA. The Review Committee reviewed the matter and held that since there was no case against the applicants under POTA and no prima facie case was found under Sections 3 and 4 of POTA, therefore, there was no basis for proceeding against the accused under POTA and the State of U.P. was directed to release all the three applicants. Various special leave petitions and writ petitions were filed against the above orders, whereby the matters came before the Supreme Court.

Allowing the appeals and writ petitions,

Held :

The possession of bombs, dynamites or hazardous explosive substances or lethal weapons in an unauthorised manner is punishable in itself and need not be in a notified area: the qualification of the notified area is not required in Section 4(*b*) of POTA. Further, if a weapon falls in the category of Section 4(*b*) under the head "lethal weapon", then irrespective of the fact that it falls in the category of Section 4(*a*) it will not be excluded from the category of Section 4(*b*). Both the provisions of clauses (*a*) and (*b*) of Section 4 cannot be read to be exclusive of each other. Both the provisions have to be read harmoniously. The purpose for which POTA was enacted i.e. prevention of terrorist activities, has to be kept in view. (Paras 17 and 29)

In the present case, a huge cache of arms and ammunition was recovered from the premises of the accused. It is unlikely that a law-abiding citizen will keep such quantity of explosives at home. It is not an explosive for the purpose of firecrackers. Keeping of such explosive at their house does not show that it was meant for a bona fide purpose. The question is whether this substance is hazardous in nature or not. The very fact of keeping such huge quantity of explosives in the house on the face of it is hazardous and it is not kept normally by a person unless he deals in explosives with authorised licence for that purpose. The possession of such explosives without any authorised licence is a serious matter. Though, it is dealt separately because the accused has already been charged under the Explosives Act. This explosive is capable of creating havoc if it is used for preparing a bomb, it is capable of mass destruction. Any person in this background possessing this hazardous explosive substance cannot be credited to have it for bona fide purpose. Therefore, the fact that hazardous substance was found in the house of Udai Pratap Singh clearly shows that the case is covered by Section 4(*b*) and it cannot be played down simply because it has been reported by the bomb disposal squad that it is of low intensity. This explosive substance is certainly hazardous and is capable of being used for preparation of bomb or other explosive material for scaring the people or for causing mass destruction, be it in terms of human beings or any building or otherwise. This aspect of the matter seems to have not been adverted to by the Review Committee. The Review Committee put a complete gloss over possession of the explosive substance, that it is not hazardous or capable of mass destruction because of its low intensity. Furthermore, the AK-56 rifle is a very dangerous weapon and it is used in warfare as well as in terrorist activities very frequently; the possession of which in an unauthorised manner is itself an offence under Section 4(*b*) of the Act. The potentiality of an AK-56 rifle [as detailed in paras 28 and 29] is capable of causing mass destruction. It fires about 600 rounds per minute, it means 600 bullets if they hit all the 600 targets, it can lead to mass destruction. Therefore, the possession of such unauthorised weapon is dangerous and is capable of mass destruction. This aspect had also not been adverted to by the Review Committee. (Paras 22, 24, 29 and 27)

Thus, so far as this case is concerned there is prima facie case for prosecuting the accused persons. These accused persons were charged under Section 3(3) read with Sections 4(*a*) and (*b*) of the Act. But so far as Section 4(*a*) is concerned, for the reasons mentioned above, it cannot proceed now. But it can proceed under Section 3(3) and Section 4(*b*) of the Act as well as under the Arms Act and the Explosives Act. (Para 30). *S.K. Shukla* v. *State of U.P.*, (2006) 1 SCC 314: (2006) 1 SCC (Cri) 366: AIR 2006 SC 413: 2006 Cri LJ 148.

Bench Strength **2**. Coram: *B.N. Agrawal* and **A.K. Mathur**, JJ. [Date of decision: 10-11-2005]

[790] — Ss. 49(7) proviso, (6) & (9) — Bail — Entitlement to — Case mainly depending on confessions of appellant accused — *Appellants in custody for more than 2 years — Allegation that appellants' firm receiving huge amounts from Dubai through hawala transactions and with full knowledge of the fact that the money received by them and*

handed over to the recipients was being used for terrorist activities — Case mainly depending upon confessions of appellants — Considering the confessions, the reports of the Review Committees and the provisions of S. 49 and the clarification provided in PUCL *v.* Union of India, *(2004) 9 SCC 580, held, case made out for grant of bail to appellants — Criminal Procedure Code, 1973, S. 439* (Paras 9 to 12). *Kirtibhai Madhavlal Joshi* v. *State of Gujarat*, (2006) 4 SCC 680: (2006) 2 SCC (Cri) 399: (2006) 3 Guj LR 1850.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 4-4-2006]

[791] — **S. 60(4) — Role of Review Committee under** — *Held, same is very limited and it has only to see whether a prima facie case is made out against the accused — It cannot enter into merits of the matter or assess sufficiency of evidence against the accused — Use of POTA for personal benefit of political parties, deprecated*

The Review Committee has also entered into the merits of the matter that the accused persons cannot be connected with the recovery of this cache of arms. The role given to the Review Committee under Section 60(4) is very limited and it has only to see whether there is a prima facie case for proceeding against the accused under the Act or not and cannot enter into the merits that whether ultimately the conviction will entail or not or the evidence is so weak to not connect the other accused persons. If the prima facie case connects the accused on the basis of the material with the prosecution then it is not for the Review Committee to dilate on that as if they are trying the cases under the Act. The Review Committee has travelled beyond its scope; the sufficiency of evidence cannot be gone into by the Review Committee. It is also not the job of the Review Committee to see whether confession is admissible or not. The use of POTA for personal benefit of the political parties has to be condemned in no uncertain terms. This Act cannot be used for political ends; it is meant for the benefit of the nation so that the terrorist activities do not disturb the sovereignty or integrity of the nation. (Para 30). *S.K. Shukla* v. *State of U.P.*, (2006) 1 SCC 314: (2006) 1 SCC (Cri) 366: AIR 2006 SC 413: 2006 Cri LJ 148.

Bench Strength **2**. Coram: *B.N. Agrawal* and **A.K. Mathur**, JJ. [Date of decision: 10-11-2005]

PREVENTIVE DETENTION

Synopsis

1. Detention Order
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   (e) National Security Act, 1980
   (f) Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976
   (g) T.N. Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest-Offenders, Goondas, Immoral Traffic-Offenders and Slum-Grabbers Act, 1982 (14 of 1982)

1. DETENTION ORDER

(a) Application/Non-application of mind

[792] — **Delay in disposal or representation — Extenuating circumstances — What are** — *Detaining authority getting only 12 working days after taking charge within which detention order was passed — Documents ran into 2000 pages — Held, examination of proposal for detention is a continuing process involving scrutiny at various levels in the*

Home Deptt. — Though proposal made much earlier, further documents generated and furnished to detaining authority which it considered — Merely because detaining authority also considered the draft grounds of detention prepared by its predecessor, that would not vitiate the detention order if it had not passed it mechanically but passed it after applying mind to relevant materials and on arriving at independent subjective satisfaction — Detention order in this case was not vitiated by non-application of mind — COFEPOSA, 1974, S. 3(1)

The order of detention was not prepared overnight. As explained by the detaining authority it is a continuous process. The proposal of the sponsoring authority is first examined by the Screening Committee and thereafter by the officers of the Home Department at various levels. The material collected is then placed before the detaining authority for its consideration. In this case the sponsoring authority had made a proposal much earlier, but from time to time further generated documents were being dispatched to the detaining authority which were considered by the detaining authority. There is really no basis for the assertion that the detaining authority without applying her mind passed the order of detention. The detaining authority did apply her mind to the material on record and only on being subjectively satisfied about the compelling necessity to issue the order of detention, issued the order and grounds of detention. It may be that she also considered the draft grounds of detention which may have been prepared by the earlier detaining authority, but that by itself will not vitiate her order if she applied her mind to the relevant material on record and recorded an independent subjective satisfaction on the basis thereof. In the facts and circumstances of this case, the detaining authority did not proceed to issue the order of detention mechanically on the basis of the subjective satisfaction of her predecessor, but applied her mind to the material on record and independently reached the subjective satisfaction that it was necessary, in the facts of the case, to issue the order of detention. (Paras 11 and 13). *Sheetal Manoj Gore* v. *State of Maharashtra*, (2006) 7 SCC 560: (2006) 3 SCC (Cri) 314.

Bench Strength **2**. Coram: **B.P. Singh** and *R.V. Raveendran*, JJ. [Date of decision: 21-8-2006]

[**793**] — **Inference warranted** — *Previous detention order passed on same grounds, quashed as no liberty was given to detenu to file proper representation against that order — Previous order quashed on same day the present detention order was passed — Held, the detaining authority had not applied its mind while passing the present order — Hence, the said order set aside — State given liberty to take action against detenu in pending criminal cases — Particular Statutes — J&K Public Safety Act, 1978 (6 of 1978)* (Para 1). *Suram Chand* v. *State of J&K*, (2005) 13 SCC 172: (2006) 2 SCC (Cri) 132.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Arun Kumar*, JJ. [Date of decision: 6-10-2005]

[**794**] — **Whether on facts there was non-application of mind — Detenu alleged to be a "goonda", habitually committing crime and also acting in a manner prejudicial to the maintenance of public order** — *Word "goonda" as defined in the Act — Meaning — "Habitually" commits, offences — Meaning of word "habitually" — Grounds of detention referring to only one incident — In absence of any material showing that detenu was habitually committing crimes, held on facts, detenu was not covered by the definition of "goonda" — Hence order of detention cannot be maintained — T.N. Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest-Offenders, Goondas, Immoral Traffic-Offenders, Slum-Grabbers and Video Pirates Act, 1982 (14 of 1982), Ss. 2(f) & 3(1) — Words and phrases — "Habitually"*

In order to attract action in terms of Section 3(1) of the Act, the detenu must be one who is a "goonda" as defined under Section 2(*f*) of the Act. Though in other preventive detention laws, even a single act which has the propensity of affecting the even tempo of life and public tranquillity would be sufficient for detention, being prejudicial to maintenance of public order, for the purpose of the Act the detenu has to be a "goonda" as defined under Section 2(*f*) of the Act, according to which a "goonda means a person, who ... habitually commits offences". The expression "habitually" is very significant. A person is said to be a habitual criminal who by force of habit or inward disposition is accustomed to commit crimes. It implies commission of such crimes repeatedly or persistently and prima facie there should be continuity in the commission of those offences. It does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. From one single transaction though consisting of several acts, a habit cannot be attributed to a person. (Paras 9, 13, 12 and 14)

Therefore, in this case the order of detention cannot be maintained because it only refers to one act. There is also no material to justify the conclusion that the accused was habitually committing crime. There is no reference to any other crime. Therefore, the order of detention cannot be maintained. (Para 15). *R. Kalavathi* v. *State of T.N.*, (2006) 6 SCC 14: (2006) 3 SCC (Cri) 11.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 3-7-2006]

(b) Bar to passing of detention order

[795] — **Need for substantiating material** — *Contention that detention order could not have been passed against detenu as he was a non-resident Indian — But, no materials on record to prove the said fact — Hence held, order of detention rightly passed and not liable to be interfered with — COFEPOSA, 1974, S. 3(1)* (Para 26). *D. Anuradha* v. *Jt. Secy.*, (2006) 5 SCC 142: (2006) 2 SCC (Cri) 432: 2006 Cri LJ 2784.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 24-4-2006]

(c) Challenge to detention order

[796] — **New plea regarding delay in passing the order raised in appeal before Supreme Court against dismissal of writ petition by High Court** — *Permissible when facts are admitted and detention order can be considered from a different angle — Although appellant detenu had been set at large on completion of period of detention under COFEPOSA Act in the meanwhile, but he pursued the appeal as proceedings under SAFEMA were initiated against him — Detention order was thus required to be quashed so as to enable appellant to avoid his civil liabilities under SAFEMA as also to protect his own reputation — In the circumstances, held, the new plea can be allowed to be raised in view of the admitted facts*

Although ordinarily the Supreme Court should not exercise its discretionary jurisdiction under Article 136 by allowing the appellant to raise new grounds but, the Court may have to do so as an order of detention may have to be considered from a different angle. It may be true that the period of detention is over. It may further be true that the appellant had remained in detention for the entire period but it is one thing to say that the writ of habeas corpus in this circumstance cannot issue but it is another thing to say that an order of detention is required to be quashed so as to enable the detainee to avoid his civil liabilities under SAFEMA as also to protect his own reputation. In a case of this nature, in view of the admitted facts, the Court would permit the appellant to raise the new plea regarding delay in passing the detention order. (Para 18). *Adishwar Jain* v. *Union of India*, (2006) 11 SCC 339: (2007) 1 SCC (Cri) 464.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 19-10-2006]

(d) Delay in execution of the order

[797] — **Detenu evading arrest and absconding — Best possible efforts made by authorities to serve the order** — *In view of detenu's own act of evading the arrest, delay in execution of the order did not render the detention order invalid*

It was urged that the searches of the premises of the appellant were conducted on 10-12-1996 and 30-12-1996 and his statement was also recorded between 19-12-1996 and 30-1-1997, but he was taken into custody after more than a year on 12-3-1998 and on account of this long delay the live and proximate link in the alleged activities of the appellant and the date of his actual detention was snapped and there was no reasonable cause for detaining the appellant.

Held :

The argument was wholly misconceived. The detention order which was passed on 12-2-1997, soon after the searches had been made and the statement of the appellant had been recorded, could not be served in spite of every possible attempt that had been made to serve him as the appellant was absconding. Where a person himself evades service of detention order, it is not open to him to contend that in view of the long period which has elapsed between the offending activities and the actual arrest and detention, the vital link had snapped and there was no ground for actually detaining him. An otherwise valid detention order cannot be rendered invalid on account of the own act of the detenu of evading arrest and making himself scarce. (Para 16). *Vinod K. Chawla* v. *Union of India*, (2006) 7 SCC 337: (2006) 3 SCC (Cri) 270: AIR 2006 SC 2864.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **G.P. Mathur**, JJ. [Date of decision: 18-8-2006]

[798] — **Effect on execution of the order — Serving of remainder period of detention by detenu** — *Supreme Court setting aside High Court's order of quashing the detention order — Whether respondent detenu in such circumstances could be appropriately directed to surrender for serving remaining period of detention in view of passage of time — Held, passage of time in all cases cannot be a ground not to send the detenu to serve remainder of the period of detention — It all depends on the facts of the act and the continuance or otherwise of the effect of the objectionable acts — State directed to consider within a period of two months whether there still existed a proximate temporal nexus between the period of detention indicated in the detention order and the date when the detenu was required to be detained pursuant to Supreme Court's order* (Para 9). *State of T.N.* v. *Alagar*, (2006) 7 SCC 540: (2006) 3 SCC (Cri) 311.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 6-7-2006]

(e) Delay in passing detention order

[799] — **Contention that detention order was passed after about two years of the alleged illegal act on the basis of stale materials and, therefore, the same was unsustainable — Sustainability** — *Allegations made against detenu were of serious nature involving crores of rupees — Transactions had been done in a clandestine manner with the help of foreign nationals — Detenu claimed himself to be a non-resident Indian — Held, the detaining authority had to consider these materials and cross-check the transactions — Hence, in view of the fact that these materials contributed to delay, contention regarding delay in passing of detention order could not be accepted — COFEPOSA, 1974, S. 3(1)* (Para 25). *D. Anuradha* v. *Jt. Secy.*, (2006) 5 SCC 142: (2006) 2 SCC (Cri) 432: 2006 Cri LJ 2784.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 24-4-2006]

[800] — **Delay in service of detention order — Unexplained delay in making the order or serving the order would vitiate the order itself** — *However, there can be no specific or mechanical test for determining whether there has been undue delay* (Para 23). *Usha Agarwal* v. *Union of India*, (2007) 1 SCC 295: (2007) 1 SCC (Cri) 342.

Bench Strength **2**. Coram: *S.H. Kapadia* and **R.V. Raveendran**, JJ. [Date of decision: 2-11-2006]

[801] — **Effect — Passing of detention order after about 10 months of the alleged illegal act** — *No explanation given for the said long delay — Held, it was a ground to set aside the detention order — COFEPOSA, 1974, S. 3*

In the meanwhile, a proposal was forwarded to DRI, Delhi Zonal Unit, Delhi for detention of the appellant under the COFEPOSA Act. The said detention order was issued on 31-3-2005. The appellant filed a writ petition before the High Court for quashing the aforesaid detention order. The High Court dismissed the said petition. Hence, the present appeal.

Allowing the appeal,

Held :

A pre-detention order can be quashed only on limited grounds. (Para 11)

It is not in dispute that although the raid was conducted on 26-5-2004, no material had been brought on record for even launching a prosecution as against the appellant as yet. It is furthermore not in dispute that even the DGFT Authorities have not issued any show-cause notice in exercise of their power under the Foreign Trade (Development and Regulation) Act, 1994. (Paras 18, 19 and 10)

The question as regards delay in issuing the order of detention is a valid ground for quashing an order of detention. The delay caused in this case in issuing the order of detention has not been explained. In fact, no reason in that behalf whatsoever has been assigned at all. (Paras 21 and 22)

Furthermore, the status report called for from the Customs Department has not been taken into consideration by the competent authorities. The Supreme Court in *K.S. Nagamuthu*, (2005) 9 Scale 534 struck down an order of detention on the ground that the relevant material had been withheld from the detaining authority. (Paras 23 and 24)

Having regard to the findings aforementioned, it is held that Grounds (*iii*) and (*iv*) of the decision of the Supreme Court in *Alka Subhash Gadia*, 1992 Supp (1) SCC 496 for quashing the order of detention at the pre-execution stage are attracted in the present case. (Para 25). *Rajinder Arora* v. *Union of India*, (2006) 4 SCC 796: (2006) 2 SCC (Cri) 418: AIR 2006 SC 1719: 2006 Cri LJ 2102.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 10-3-2006]

[802] — **Must be sufficiently explained — Lapse of four months between proposal for detention and order of detention not explained — Detention order liable to be quashed** — *COFEPOSA, 1974, S. 3*

The appellant detenu was an exporter. He allegedly misdeclared both the value and description of goods upon procuring fake and false bills through another person. He was arrested on 13-10-2003, but was discharged on bail on 6-1-2004. Several inquiries were conducted both inside and outside India. A report in relation to overseas inquiry was received on 12-5-2004. On 25-6-2004 proposal of detention was sent which was approved on 2-12-2004. On 20-12-2004, the authorities of the DRI stated that transactions after 11-10-2003 were not under scrutiny. Furthermore, the authorities of the DRI by a letter dated 28-2-2005 requested the bank to defreeze the bank accounts of the appellants. The order of detention was passed on 5-4-2005 against him under Section 3 of the COFEPOSA Act. It was contended on behalf of the respondent that searches were conducted and statements of a large number of persons had to be recorded. The final order of detention was proceeded not only on the basis of raids conducted in various premises, recording of statements of a large number of witnesses, carrying on intensive inquiries both within India and outside India, obtaining test reports from three different laboratories but also the fact that despite notices the appellant and his associates did not cooperate with the investigating authorities. Various

(e) Delay in passing detention order *(contd.)*

civil proceedings were initiated from time to time, various interim orders were obtained and, thus, delay in passing the order of detention cannot be said to have not been explained.

Before the High Court, the principal ground urged on behalf of the appellant in questioning the legality or validity of the order of detention was unexplained delay in passing the order of detention which did not find favour with the High Court.

Held :

In this case, though delay to some extent stands explained, but it is not clear as to why despite the fact that the proposal for detention was made on 2-12-2004, the order of detention was passed after four months. In the meantime on 20-12-2004, the authorities of the DRI had clearly stated that transactions after 11-10-2003 were not under scrutiny and the said authorities by a letter dated 28-2-2005 requested the bank to defreeze the bank accounts of the appellant. The said documents were material. It was, therefore, difficult to appreciate why order of detention could not be passed on the basis of the materials gathered by them. (Paras 8, 9 and 11)

If the delay is sufficiently explained, the same would not be a ground for quashing an order of detention under COFEPOSA. Delay at both stages has to be explained. The court is required to consider the question having regard to the overall picture. In this case a major part of delay remains unexplained. (Paras 12 and 15). *Adishwar Jain* v. *Union of India*, (2006) 11 SCC 339: (2007) 1 SCC (Cri) 464.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 19-10-2006]

[803] — Validity of the order — Not to be tested on the same standard as applied to the case of consideration of representation of detenu — *However, in case of inordinate delay in passing the detention order live link between the prejudicial activity of detenu and purpose for which the order is passed is snapped and the order becomes a stale one — Having regard to the detailed explanation given by detaining authority, held, voluminous material against detenu were collected and continuously processed and considered at different stages in the Home Department of the State Govt. which consumed time whereafter only detention order could be issued and detaining authority was conscious of the urgency of the matter — In the circumstance delay of ten months in issuing the order would not render the order invalid — COFEPOSA, 1974, S. 3(1)*

It was submitted that the first statement of the detenu was recorded under Section 108 of the Customs Act by the officers of DRI on 29-3-2005. Thereafter, several statements of his were recorded, the last one on 28-4-2005. Similarly, the statements of his accomplices were also recorded between March and June 2005. The detenu was arrested on 30-3-2005 in connection with a criminal case registered against him but he, as well as one of his accomplices, was released on bail on 12-4-2005. On 10-1-2006 the impugned order of detention was passed. It was submitted that the prejudicial activity of the detenu must have come to the notice of the detaining authority sometime in March 2005, but the order of detention was passed 10 months later. It was, therefore, submitted that from March 2005 till January 2006 no order of detention was passed and this inordinate delay in issuing the order of detention itself established that there was no urgency in the matter. Neither was there material to reach the alleged subjective satisfaction, nor was it necessary to detain the detenu under the provisions of the Act.

Held :

The time taken in completing the process for issuance of order of detention has not to be tested applying the same standard as is applied in the matter of consideration of representation of a detenu. No doubt, if there is inordinate delay in issuing the order of detention, it may well be argued that the live link between the prejudicial activity of the detenu and the purpose for which the order of detention is issued is snapped, and being stale there was no justification for issuance of an order of detention. (Para 7)

In this case the detaining authority has given a very detailed and vivid account of the manner in which the file was dealt with in the Home Department of the Government of Maharashtra. It will appear that the sponsoring authority had collected large volume of evidence, which was required to be examined. At the same time, several representations were received from time to time which also were required to be considered at various levels. In the meantime the sponsoring authority had also collected more documents which it had sent to the office of the detaining authority. All this took time. Therefore, it is not as if the detaining authority was oblivious of the importance and urgency of the matter. The detailed account given by the detaining authority shows that the matter was being continuously processed and considered. It was on account of the consideration of voluminous material which was received at different stages that some time was consumed. In the facts and circumstances of the case, it must be held that the details furnished by the detaining authority provide sufficient explanation for the time taken in issuing the order of detention. The detaining authority was conscious of the fact that the matter required immediate attention,

but in view of the voluminous record which had to be scanned and scrutinised before issuance of the order of detention, the order could not be issued earlier. Thus there was no delay on the part of the authorities in taking necessary steps in connection with issuance of the order of detention. (Paras 6 and 7)

Moreover, there is one other reason which explains why the order of detention could not be issued earlier. The petitioner had moved the High Court and obtained an order of stay on 30-6-2005. Such an order was passed in view of the fact that an application for compounding of the offence was pending and it was, therefore, prayed that pending consideration of that application, no such proceedings should be resorted to. The said order was modified on 19-10-2005. This also explains why the order could not be passed earlier and only after the order was modified, the then detaining authority had made an endorsement for the issuance of order of detention, but the same could not be issued immediately for the reasons explained by the detaining authority. (Para 8). *Sheetal Manoj Gore* v. *State of Maharashtra*, (2006) 7 SCC 560: (2006) 3 SCC (Cri) 314.

Bench Strength **2**. Coram: **B.P. Singh** and *R.V. Raveendran*, JJ. [Date of decision: 21-8-2006]

(f) Detenu already in jail or custody

[804] — **Detention order if can be passed — Preconditions** — *Conditions laid down in* Kamarunnissa case, *(1991) 1 SCC 128, held, must be fulfilled in facts and circumstances of the case*

An order of detention was passed against the appellant under Section 3(1) of the T.N. Act 14 of 1982 on ground that he was a "goonda" within the meaning of the Act. The order itself noticed that the appellant was already in custody and had moved an application for grant of bail before the Principal Sessions Court which was rejected on 17-11-2004. The appellant had moved another bail application before the High Court which was withdrawn on 3-12-2004. The detaining authority noticed that the appellant had not moved any bail application subsequently but it went on to state that there was imminent possibility of the appellant coming out on bail by filing another bail application before the Sessions Court or the High Court since in similar cases bails are granted by the Sessions Court after a lapse of time. The order of detention was passed on 15-12-2004 i.e. merely 12 days after the dismissal of the bail application by the High Court. It was inter alia contended on behalf of the appellant that he was already in custody when the detention order was passed and that there was no imminent chance of his being released on bail and yet the detaining authority, even in the absence of any material to raise an apprehension that he may be released on bail in near future and continue with his nefarious activities, passed the impugned order of detention.

Allowing the appeal,

Held :

The bail applications moved by the appellant had been rejected by the courts and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The "imminent possibility" of the appellant coming out on bail was merely the ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority on the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record. In the absence of such material on record the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention. There was, therefore, no sufficient compliance with the requirements as laid down by the Supreme Court. (Para 14). *T.V. Sravanan* v. *State*, (2006) 2 SCC 664: (2006) 1 SCC (Cri) 593: AIR 2006 SC 1462: 2006 Cri LJ 1619.

Bench Strength **2**. Coram: **B.P. Singh** and *Altamas Kabir*, JJ. [Date of decision: 16-2-2006]

Rajesh Gulati v. Govt. of NCT of Delhi, (2002) 7 SCC 129: 2002 SCC (Cri) 1627; Rameshwar Shaw v. District Magistrate, Burdwan, (1964) 4 SCR 921: AIR 1964 SC 334: (1964) 1 Cri LJ 257; Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416: 1986 SCC (Cri) 490; Kamarunnissa v. Union of India, (1991) 1 SCC 128: 1991 SCC (Cri) 88, applied

[805] — **Imminent possibility of release of detenu on bail — Substantiation of apprehension — Need for** — *Apprehension of detaining authority regarding, held, must be based on cogent material — In absence of such material, detention order based on mere ipse dixit of detaining authority regarding imminent possibility of detenu's prayer for bail being granted cannot be sustained — T.N. Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest-Offenders, Goondas, Immoral Traffic-Offenders, Slum-Grabbers and Video Pirates Act, 1982 (14 of 1982), S. 3(1)*

The bail applications moved by the appellant had been rejected by the courts and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The "imminent possibility" of the appellant coming out on bail was merely the ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority on the basis of which the detaining authority could be

(f) Detenu already in jail or custody *(contd.)*

satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record. In the absence of such material on record the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention. There was, therefore, no sufficient compliance with the requirements as laid down by the Supreme Court. (Para 14). *T.V. Sravanan* v. *State*, (2006) 2 SCC 664: (2006) 1 SCC (Cri) 593: AIR 2006 SC 1462: 2006 Cri LJ 1619.

Bench Strength **2**. Coram: **B.P. Singh** and *Altamas Kabir*, JJ. [Date of decision: 16-2-2006]

Rajesh Gulati v. Govt. of NCT of Delhi, (2002) 7 SCC 129: 2002 SCC (Cri) 1627; Rameshwar Shaw v. District Magistrate, Burdwan, (1964) 4 SCR 921: AIR 1964 SC 334: (1964) 1 Cri LJ 257; Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416: 1986 SCC (Cri) 490; Kamarunnissa v. Union of India, (1991) 1 SCC 128: 1991 SCC (Cri) 88, applied

[806] — Imminent possibility or likelihood of detenu being released on bail — Drawing conclusion in respect of — Requirement for — *Held, the only requirement is that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail — Said conclusion is subjective satisfaction of detaining authority based on materials which is normally not to be interfered with by court — In the present case, statement of detaining authority that in similar cases orders granting bail were passed by various courts, not disputed by detenu — Hence, challenge to conclusion drawn by detaining authority that there was likelihood of detenu being released on bail, not sustainable*

The conclusion drawn by detaining authority about imminent possibility of release of the detenu on bail is under challenge. In such case, the only requirement is that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be ipse dixit of the detaining authority. On the basis of materials before him, the detaining authority came to the conclusion that there is likelihood of the detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with. On the facts of the case, the detaining authority has indicated as to why he was of the opinion that there is likelihood of the detenu being released on bail. It has been clearly stated that in similar cases orders granting bail are passed by various courts. The appellant has not disputed the correctness of this statement. (Paras 9 and 10). *A. Geetha* v. *State of T.N.*, (2006) 7 SCC 603: (2006) 3 SCC (Cri) 324: AIR 2006 SC 3053.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 4-9-2006]

Rajesh Gulati v. Govt. of NCT of Delhi, (2002) 7 SCC 129: 2002 SCC (Cri) 1627, distinguished on facts

[807] — Imminent possibility or likelihood of detenu being released on bail — Subjective satisfaction of detaining authority in respect of — Sustainability — *Only requirement is detaining authority's awareness about detenu being already in custody and likelihood of his being released on bail — It is the subjective satisfaction of detaining authority based on materials which is normally not to be interfered with by court — Detaining authority's view in the instant case that in similar cases, orders granting bail are passed by various courts, not disputed by detenu — In the circumstances held, subjective satisfaction of detaining authority about likelihood of detenu being released on bail cannot be questioned — COFEPOSA, 1974, S. 3(1)(i)*

It was submitted on behalf of the appellant detenu that the High Court was not justified in holding that the detaining authority's view about imminent possibility of the detenu coming out on bail was correct. It was also submitted that since the detenu had not filed any bail application after withdrawal of the first petition, the detaining authority could not have inferred that there was possibility of his being released on bail.

Dismissing the appeal,

Held :

Whether prayer for bail would be accepted depends on the circumstances of each case and no hard-and-fast rule can be applied. The only requirement is that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be an ipse dixit of the detaining authority. On the basis of materials before it, the detaining authority came to the conclusion that there is likelihood of the detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with. On the facts of the case, the detaining authority has indicated as to why he was of the opinion that there is likelihood of the detenu being released on bail. It has been clearly stated that in similar cases, orders granting bail are passed by various courts. The appellant has not disputed the correctness of this statement. Therefore, the High Court was justified in rejecting the stand of the appellant. (Para 7). *Ibrahim Nazeer* v. *State of T.N.*, (2006) 6 SCC 64: (2006) 3 SCC (Cri) 17.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 10-7-2006]

Rajesh Gulati v. Govt. of NCT of Delhi, (2002) 7 SCC 129: 2002 SCC (Cri) 1627, distinguished

(g) Judicial review/Validity

[808] — **Grounds for** — *Detention order quashed by the High Court on ground that the order of remand along with the forwarding letter was not sent to the detaining authority, and/or an additional affidavit was not filed — However, order of remand was placed by the sponsoring authority before the detaining authority when the detention order was passed, undisputed — Held, in such circumstances High Court's view that there should have been a forwarding letter or an additional affidavit was clearly without basis — Impugned order set aside — T.N. Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (14 of 1982), S. 3(1)* (Paras 5 and 6). *State of T.N.* v. *Alagar*, (2006) 7 SCC 540: (2006) 3 SCC (Cri) 311.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 6-7-2006]

[809] — **Validity of detention order — Held on facts, order based on adequate material** — *National Security Act, 1980, S. 3(2)*

On a report of a Head Constable of Police, while investigating an alleged crime, the husband of the appellant was taken into custody. On being questioned, the husband of the appellant, made a statement which showed that he was an active member of a terrorist organisation "Vidial Velli". It was also found that he was actively involved with that organisation and other organisations like Al-Umma and SIMI, organisations which had been banned. In the light of the facts disclosed by the investigation and in view of the statement made by the husband of the appellant, an order was passed by the detaining authority under the National Security Act for his detention.

Held :

On a due consideration of the materials relied on by the Government and the reasons given by the High Court in refusing to interfere with the order of detention passed, it must be held that adequate materials exist for the detention of the appellant under the National Security Act. (Para 6). *A. Maimoona* v. *State of T.N.*, (2006) 1 SCC 515: (2006) 1 SCC (Cri) 428: AIR 2006 SC 711: 2006 Cri LJ 560.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.K. Balasubramanyan**, JJ. [Date of decision: 16-12-2005]

(h) Non-placement of relevant material before detaining authority

See 'Evaluation of grounds of detention' — Non-placement of relevant material before detaining authority, below, (2006) 5 SCC 142

[810] — **Effect** — *Relevant material i.e. status report called for from the Customs Department not considered in passing detention order — Held, it was a ground to set aside the detention order — COFEPOSA, 1974, S. 3*

Furthermore, the status report called for from the Customs Department has not been taken into consideration by the competent authorities. The Supreme Court in *K.S. Nagamuthu*, (2005) 9 Scale 534 struck down an order of detention on the ground that the relevant material had been withheld from the detaining authority. (Paras 23 and 24). *Rajinder Arora* v. *Union of India*, (2006) 4 SCC 796: (2006) 2 SCC (Cri) 418: AIR 2006 SC 1719: 2006 Cri LJ 2102.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 10-3-2006]

[811] — **Failure to place before detaining authority detenu's letter retracting his admission as to guilt made before Customs Officials arresting him — Effect of** — *Held, the said letter contained relevant material, which ought to have been considered by the detaining authority — Since relevant material was withheld from the detaining authority, the order of detention must be struck down as being illegal — COFEPOSA, 1974, S. 3(1)(i)* (Para 10). *K.S. Nagamuthu* v. *State of T.N.*, (2006) 4 SCC 792: (2006) 2 SCC (Cri) 414: AIR 2006 SC 374: 2005 Cri LJ 5079.

Bench Strength **2**. Coram: *B.P. Singh* and *R.V. Raveendran*, JJ. [Date of decision: 16-11-2005]

[812] — **Sending of relevant material by detenu to improper authority — State taking plea of, as a reason for non-placement of the said material — Sustainability of** — *Detenu arrested by Customs Officials — Relevant material i.e. letter of detenu retracting admission as to guilt made before the said officials, though addressed to Superintendent of Customs, delivered through an advocate in the office of Asstt. Commissioner of Customs — The offices of the said officers were in the same building — Held, the Asstt. Commissioner of Customs was a responsible officer and should have known to whom such letters should be sent — Having regard to the facts and circumstances, it could not be said that the letter was not communicated to appropriate authority — Contention that the letter should have been addressed to the sponsoring authority (on whose recommendation the detaining authority passed the detention order) was not sustainable as till the date on which the said retraction was made and communicated by the detenu, no detention order had been passed and the detenu had no knowledge that the order of detention was about to be passed under — Clarified that this judgment should not be understood to have laid down a broad proposition to the effect that a letter addressed to any officer of any department of the*

(h) Non-placement of relevant material before detaining authority *(contd.)*

Government would amount to service thereof on the State — It would, therefore, depend on the facts and circumstances of each case — COFEPOSA, 1974, S. 3(1)(i). K.S. Nagamuthu v. *State of T.N.*, (2006) 4 SCC 792: (2006) 2 SCC (Cri) 414: AIR 2006 SC 374: 2005 Cri LJ 5079.

Bench Strength **2**. Coram: *B.P. Singh* and *R.V. Raveendran*, JJ. [Date of decision: 16-11-2005]

[813] — Withholding of irrelevant material — *Withholding of material which was irrelevant and did not affect the decision of detaining authority, held, not fatal — COFEPOSA, 1974, S. 3(1)*

In his statement *N* has stated that he is a lawyer in Singapore and that the detenu had taken legal assistance and that he was not obliged to reveal the materials as they were confidential communications. Therefore, it is clear that the statement of *N* was of no consequence and the sponsoring authority rightly withheld the same as it was irrelevant. The said statement did not divulge any details which would have in any way affected the decision of the detaining authority. (Paras 22 and 24). *D. Anuradha* v. *Jt. Secy.*, (2006) 5 SCC 142: (2006) 2 SCC (Cri) 432: 2006 Cri LJ 2784.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 24-4-2006]

(i) Pre-execution challenge to detention order

[814] — Interference by court — Scope — *Held, a pre-detention order can be quashed only on a limited ground — Such grounds laid down in* Alka Subhash Gadia, *1992 Supp (1) SCC 496, whether applicable in the present case — Appellant importing raw materials for use in manufacture of goods meant for export — Raid conducted and appellant arrested — Subsequently, released on bail — Detention order passed belatedly after about 10 months of the raid — No explanation for the said long delay — No prosecution launched against appellant till date — DGFT authorities not issuing any show-cause notice to appellant for non-fulfilment of export commitments — Status report called for from Customs Department not considered in passing detention order — On such facts, grounds (iii) & (iv) of the decision in* Alka Subhash Gadia case *for quashing detention order prior to its execution i.e. where the impugned order is passed for a wrong purpose and where it is passed on vague, extraneous and irrelevant grounds, held, attracted — Detention order could not be sustained — Hence, set aside — COFEPOSA, 1974, S. 3 — Foreign Trade (Development and Regulation) Act, 1992, Ss. 9(4), 10 & 11*

The appellant was an industrialist. The units of the appellant were recognised export houses. The appellant imported some raw materials on the premise that the imported items would be utilised for manufacture of the goods which were meant for export. A raid was conducted in his residence on 26-5-2004 by the Directorate of Revenue Intelligence (DRI) and he was taken into custody. He allegedly was continuously tortured for two days. During his detention, statements under Section 108 of the Customs Act were recorded allegedly under coercion, duress and threat. He was shown arrested on 28-5-2004 and produced before a Magistrate. After he was remanded to judicial custody by the Magistrate by an order dated 28-5-2004, he retracted his alleged confession stating that the same had been obtained under coercion, duress and torture. He remained under treatment for 45 days out of the total period of 60 days of his judicial remand. Upon failure on the part of the DRI Department to file a complaint against the appellant within the statutory period of 60 days, he was enlarged on bail on 28-7-2004. Thereafter on 18-2-2005, the appellant filed a criminal complaint against the officers concerned alleging his illegal detention and torture.

In the meanwhile, a proposal was forwarded to DRI, Delhi Zonal Unit, Delhi for detention of the appellant under the COFEPOSA Act. The said detention order was issued on 31-3-2005. The appellant filed a writ petition before the High Court for quashing the aforesaid detention order. The High Court dismissed the said petition. Hence, the present appeal.

Allowing the appeal,

Held :

A pre-detention order can be quashed only on limited grounds. (Para 11)

It is not in dispute that although the raid was conducted on 26-5-2004, no material had been brought on record for even launching a prosecution as against the appellant as yet. It is furthermore not in dispute that even the DGFT Authorities have not issued any show-cause notice in exercise of their power under the Foreign Trade (Development and Regulation) Act, 1994. (Paras 18, 19 and 10)

The question as regards delay in issuing the order of detention is a valid ground for quashing an order of detention. The delay caused in this case in issuing the order of detention has not been explained. In fact, no reason in that behalf whatsoever has been assigned at all. (Paras 21 and 22)

Furthermore, the status report called for from the Customs Department has not been taken into consideration by the competent authorities. The Supreme Court in *K.S. Nagamuthu*, (2006) 4 SCC 792 struck down an order of detention on the ground that the relevant material had been withheld from the detaining authority. (Paras 23 and 24)

Having regard to the findings aforementioned, it is held that Grounds (*iii*) and (*iv*) of the decision of the Supreme Court in *Alka Subhash Gadia*, 1992 Supp (1) SCC 496 for quashing the order of detention at the pre-execution stage are attracted in the present case. (Para 25). *Rajinder Arora* v. *Union of India*, (2006) 4 SCC 796: (2006) 2 SCC (Cri) 418: AIR 2006 SC 1719: 2006 Cri LJ 2102.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 10-3-2006]

Addl. Secy., Govt. of India v. Alka Subhash Gadia, 1992 Supp (1) SCC 496: 1992 SCC (Cri) 301, applied

(j) Subjective satisfaction of detaining authority

[**815**] — **Conclusion that there was likelihood of detenu being released on bail, arrived at by detaining authority, though no bail application filed by detenu — Propriety of** — *Held, was proper as for the said conclusion detaining authority was only required to be aware that the detenu was in custody and was likely to be released on bail — Said conclusion was subjective satisfaction of detaining authority based on materials before the detaining authority — Normally, such satisfaction is not to be interfered with — On facts, detaining authority had indicated reasons for his said conclusion.* (Para 10). *Senthamilselvi* v. *State of T.N.*, (2006) 5 SCC 676: (2006) 3 SCC (Cri) 50.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 9-6-2006]

Rajesh Gulati v. Govt. of NCT of Delhi, (2002) 7 SCC 129: 2002 SCC (Cri) 1627, distinguished on facts

— Detenu already in jail — Imminent possibility or likelihood of detenu being released on bail — Conclusion drawn by detaining authority in respect of — Challenge to *See* 'Detention order' — Detenu already in jail or custody, above, (2006) 7 SCC 603

[**816**] — **Documents to be placed before detaining authority — Non-furnishing of statement of detenu's son retracting his earlier statement — Effect** — *Grounds of detention mentioning that Directorate of Revenue Intelligence had received information that appellant detenu was indulging in evasion of customs duty by importing goods at grossly underinvoiced prices and by circumventing Export and Import Policy and remitting payments for the same through illegal channels — Detention order showing that detaining authority placed reliance on statements of detenu himself making certain admissions and on documents and materials recovered from the premises and godowns owned by detenu — Only a passing reference made to the statement made by detenu's son before DRI that for the last one year prior to recording of his statement, he had been placing his orders with overseas supplier though previously orders had been placed by detenu himself — But statement of detenu's son before ACMM by which he subsequently retracted from his statement not placed before detaining authority by sponsoring authority — Held, retraction made by detenu's son had not affected opinion of detaining authority regarding detention of detenu and hence order of detention cannot be illegal merely because of non-placement of the statement of retraction before detaining authority — COFEPOSA, 1974, S. 3(1)*

On behalf of the appellant detenu it was submitted that the grounds of detention made reference to the statement made by the appellant's son, before the officers of DRI. But when he was produced before the ACMM, he specifically retracted from the statement allegedly made by him before the officers of DRI. The said statement of the detenu's son whereby he specifically retracted from the statement made before the officers of DRI, was not placed by the sponsoring authority before the detaining authority and, therefore, a vital document which could affect the opinion of the detaining authority one way or the other was suppressed and was not placed before him (detaining authority) and thus the detention order passed against the appellant is illegal.

Rejecting the contention and dismissing the appeal,

Held :

The detention order was not at all based upon the statement of the detenu's son, nor any real support was taken by the detaining authority from his statement in order to come to the conclusion that the appellant was the owner of the firms which placed orders for import of various items and invoices whereof were deliberately grossly undervalued in order to evade customs duty and huge sum of money was remitted through illegal channels. Another fact which deserves notice is that the detenu's son had merely stated that the orders with the overseas supplier used to be placed by the appellant till one year earlier to the recording of his statement. The alleged retraction of statement has not been made by the appellant but by his son. The detention order was not based upon the statement of the detenu's son but merely a passing reference was made to the same. Had the appellant retracted from his statement and the said retraction had not been placed before the detaining authority, the position may have been different as in such a case it could be urged that the formation of opinion by the detaining authority and his subjective satisfaction in that regard had been affected. But such is not the case here. The retraction of the statement by the detenu's son has no bearing at all as it in no way could affect the formation of opinion and the subjective satisfaction of the detaining authority. Mere fact that the sponsoring, authority did not place the statement of the detenu's son in the Court of ACMM, New Delhi, before the detaining authority,

(j) Subjective satisfaction of detaining authority *(contd.)*

cannot lead to an inference that the formation of opinion and the subjective satisfaction of the detaining authority was vitiated in any manner. (Paras 9 and 11)

The law does not require that every document or material in possession of sponsoring authority must necessarily be placed by him before the detaining authority and in every case where any such document or material is not placed by the sponsoring authority before the detaining authority, the formation of opinion and the subjective satisfaction of the detaining authority would get vitiated. (Para 10). *Vinod K. Chawla* v. *Union of India*, (2006) 7 SCC 337: (2006) 3 SCC (Cri) 270: AIR 2006 SC 2864.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **G.P. Mathur**, JJ. [Date of decision: 18-8-2006]

[817] — Illegibility of parts of documents supplied by detenu and relied upon — *Held, Department could very well rely on the partially legible portion of the documents together with other documents for basing its decision*

The High Court found that a portion of the documents said to be illegible were copies of the documents which were supplied by the detenu himself, and the Department could do no better than to furnish the copies thereof. If the documents furnished by the detenu to the Department contained some portions or pages which were illegible, obviously the copies thereof furnished by the detaining authority to the detenu will also contain such illegible portions. The contention that if really any document furnished by the detenu was illegible, it could not have been used against the detenu, overlooks the fact that a document may contain several sheets and illegibility of some sheets or parts of some sheets will not come in the way of the authorities making use of the legible portions of the documents furnished by the detenu, supplemented by other documents secured during investigation. There is nothing strange in the Department making use of partially legible documents furnished by detenu. Therefore, illegibility of portions of documents which are copies of documents furnished by the detenu, cannot be a ground for grievance by the detenu. (Para 19). *Usha Agarwal* v. *Union of India*, (2007) 1 SCC 295: (2007) 1 SCC (Cri) 342.

Bench Strength **2**. Coram: *S.H. Kapadia* and **R.V. Raveendran**, JJ. [Date of decision: 2-11-2006]

[818] — Likelihood of detenu to be released on bail — Inference of — Material on which to be based — *Held, the same has to be drawn from material available on record — In absence of such material, mere ipse dixit of detaining authority is not sufficient to sustain the order of detention — Hence, impugned detention order was liable to be quashed — T.N. Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (14 of 1982)* (Para 4). *A. Shanthi* v. *Govt. of T.N.*, (2006) 9 SCC 711: (2006) 3 SCC (Cri) 371.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 12-5-2006]

T.V. Saravanan v. State, (2006) 2 SCC 664: (2006) 1 SCC (Cri) 593, applied

[819] — Material to be placed by sponsoring authority before detaining authority — Selection of — *Sponsoring authority not required to examine relevance of documents with a view to place only selected documents before detaining authority and withhold other documents on ground that the same would not affect subjective satisfaction of detaining authority — A document would be relevant for the purpose of preventive detention if it relates to or has bearing on any smuggling/prejudicial activity on the part of detenu or detenu's propensity and potentiality to continue the prejudicial activity necessitating the order of detention — Held on facts, the document withheld by sponsoring authority was not relevant, hence detention order not vitiated — COFEPOSA, 1974, S. 3*

At the instance of DRI (the sponsoring authority), the detaining authority (Govt. of India, Ministry of Finance, Deptt. of Revenue, represented by its Joint Secretary) passed an order of detention dated 19-8-2004 under Section 3(1) of the COFEPOSA Act. In the grounds in support of the detention order, the detaining authority stated that the action of the detenu in diverting duty-free imported goods into the domestic market in violation of the DEEC Scheme licences, amounted to "smuggling" of goods. The detaining authority also stated that the nature and gravity of the offence and the dubious and fraudulent *modus operandi* employed by the detenu showed his propensity and potentiality to indulge in such illegal activities in future, necessitating detention to prevent him from continuing such activities.

The detention order was challenged, inter alia, on the ground that the sponsoring authority had withheld from the detaining authority a relevant material viz. orders stopping EXIM benefits to one of the companies (Sandip Exports Ltd. in which the detenu was Director in charge of the management) made under Rule 7 of the Foreign Trade (Regulation) Rules, 1993. The detaining authority could not therefore apply his mind to all the relevant materials before making the order of detention. Rejecting the contention,

Held :

A detention under the COFEPOSA Act is anticipatory and preventive. It is neither punitive nor

curative. Preventive detention being one of the two exceptions to the constitutional protection under Article 22 against arrest and detention, certain procedural safeguards are provided in respect of exercise of the power to direct preventive detention. The procedural safeguards under the Constitution have been interpreted, to require every material which is relevant, having a bearing on the question as to whether a person should be detained under the Act, to be placed before the detaining authority, as the decision to detain a person is rendered by a detaining authority on his subjective satisfaction as to the existence of the grounds for such detention. The sponsoring authority should not undertake any exercise of examination and interpretation of the available material with a view to place the documents selectively before the detaining authority. It is not for the sponsoring authority to decide as to which of the relevant documents should be placed before the detaining authority, or which of the documents are likely to help or not help, the prospective detenu. Consequently, the sponsoring authority cannot exclude any particular document from the material to be placed before the detaining authority. If the relevant facts or documents which may influence the subjective satisfaction of the detaining authority on the question whether or not to make the detention order, are not placed before the detaining authority, or are not considered by the detaining authority, it may vitiate the detention order itself. It is no answer to say that the exclusion of a relevant document did not affect the decision to detain a person, in view of the other documents that were placed before the detaining authority or that the detaining authority would have come to the same conclusion even if it had considered the said document. (Para 11)

A document is relevant for considering the case of a person for preventive detention if it relates to or has a bearing on either of the following two issues: (*a*) whether the detenu had indulged in smuggling or other activities prejudicial to the State, which the COFEPOSA Act is designed to prevent; and (*b*) whether the nature of the illegal and prejudicial activity and the manner in which the detenu had indulged in such activity, gave a reasonable indication that he would continue to indulge in such activity. In other words, whether he had the propensity and potentiality to continue the prejudicial activity necessitating an order of detention. (Para 13)

The document in question did not prove any smuggling/prejudicial activity on the part of the detenu. It only shows that the Department of Foreign Trade had stopped all EXIM benefits to Sandip Exports Ltd., pending further action, as certain illegal activities of that Company had come to its notice. The said document was, therefore, neither relevant nor necessary to decide whether the detenu had indulged in smuggling or other prejudicial activity. The detaining authority obtained satisfaction in regard to that aspect from the material that was placed by the sponsoring authority to show illegal activities which amounted to smuggling. (Para 14)

The said document was also not relevant to establish propensity or potentiality of the detenu to continue his illegal activities. The export-import violations, which amount to smuggling, involve considerable planning, organisation and establishing a network. The propensity is deducible from the *modus operandi* adopted by the violator, the inclination of the violator to indulge in such activities and the further opportunity to commit such illegal activities. Persons indulging in such prejudicial activities routinely create "front" companies and firms. The fact that a particular "front" company is denied the EXIM benefits will not deter a violator from continuing such activities, as he can always operate through other "front" companies/firms. The contention of the detenu that as the said order stopped the EXIM benefits to Sandip Exports Ltd., he could not have continued the alleged illegal activity, and therefore, the detention order was not warranted, is untenable. The EXIM benefits were stopped with reference to only one company, namely, Sandip Exports Ltd., and that too till finalisation of further action. When the benefits of illegal activity are stopped to a particular company, the brain behind the violation, would merely shift the operations to another "front" company or start the activities through a new company. It should also be noted that whenever any irregularities/violations in regard to export/import come to the attention of the Department, the benefits are stopped in the normal course, pending finalisation of further action. Therefore, it cannot be said that the document whereby EXIM benefits to one of the companies controlled by the detenu were stopped, was a "relevant" document, non-consideration of which would vitiate the detention order. (Para 15). *Usha Agarwal* v. *Union of India*, (2007) 1 SCC 295: (2007) 1 SCC (Cri) 342.

Bench Strength **2**. Coram: *S.H. Kapadia* and **R.V. Raveendran**, JJ. [Date of decision: 2-11-2006]

Usha Agarwal v. Union of India, 2006 Cri LJ 2934 (Cal), affirmed

[820] — Non-placement of material documents before detaining authority — Documents relating to civil litigations initiated by appellant detenu allegedly with a view to obstruct preventive detention proceedings not placed before detaining authority — *Held, documents being vital and material, in absence thereof, detention order vitiated — COFEPOSA, 1974, S. 3*

(j) Subjective satisfaction of detaining authority *(contd.)*

Although it was contended on behalf of the respondent that the appellant obstructed the proceedings by initiating various civil litigations, but indisputably, those documents involving the civil court proceedings were not placed before the detaining authority. Furthermore, after the civil court proceedings were over, the detaining authority did not take immediate steps to detain the appellant. Why the documents pertaining to the proceedings of the civil court had not been placed before the detaining authority has not been explained. On their own showing, the respondents admitted that they were relevant documents. If the same had not been done, not only the delay, in issuing the order of detention stood unexplained but also thereby the order itself would become vitiated. (Para 21). *Adishwar Jain* v. *Union of India*, (2006) 11 SCC 339: (2007) 1 SCC (Cri) 464.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 19-10-2006]

[821] — Supply of copies to detaining authority of bail application and order thereon granting bail — Whether necessary — *Would depend upon facts and circumstances of each case — If the bail application contained material facts which detaining authority was required to take into consideration, then copy thereof must be furnished to it — If order granting bail contained certain conditions pursuant to or in furtherance of which detenu may or may not flee from justice, that may be a relevant consideration for detaining authority for which bail application and order thereon should be furnished to detaining authority — But if application for bail was based on the ground that the offence complained of was bailable under provisions of relevant Act and bail was granted on that ground alone, copy of the application need not be furnished to detaining authority since whether an offence is bailable or not under a provision of law is presumed to be known to court and/or detaining authority — Only relevant and vital documents are required to be supplied and copy of the application for bail is not such a vital document — Non-furnishing of copy of bail application to detaining authority in such case, especially when copy thereof had been furnished to detenu, held, could not be said to have impaired subjective satisfaction of the detaining authority — COFEPOSA, 1974, S. 3*

A writ petition praying for issuance of habeas corpus was moved before High Court inter alia contending that a copy of the application for bail having not been supplied to the detaining authority, the impugned order was vitiated in law. The High Court dismissed the writ petition.

Before the Supreme Court in appeal, it was submitted that a distinction must be made in the matter of supply of a copy of the bail application in a case where the detenu is in custody and in a case where he was free on the date of passing of the order of detention, that whereas in the former case neither a copy of the bail application nor an order of bail is required to be placed before the detaining authority by the sponsoring authority, in the latter case, the same is imperative in nature.

Dismissing the appeal,

Held :

It is no doubt true that clause (5) of Article 22 of the Constitution mandates that all procedural requirements contemplated thereby as also the relevant provisions of COFEPOSA are required to be strictly complied with in a case of preventive detention. It is also true that whether a detenu on the date of the passing of the order of detention was in custody or not, would be a relevant fact. It would also be a relevant fact that whether he is free on that date and if he is, whether he is subjected to certain conditions in pursuance to and in furtherance of the order of bail. If pursuant to or in furtherance of such conditions he may not be able to flee from justice, that may be held to be relevant consideration for the purpose of passing an order of detention but the converse is not true. Some such other grounds raised in the application for bail and forming the basis of passing an order of bail may also be held to be relevant. It would, however, not be correct to contend that irrespective of the nature of the application for bail or irrespective of the nature of the restrictions, if any, placed by the court of competent jurisdiction in releasing the detenu on bail, the same must invariably and mandatorily be placed before the detaining authority and the copy thereof supplied to the detenu. There is no such universal rule that irrespective of the facts and circumstances of the case it would be imperative to place all applications for bail as also the orders passed thereupon before the detaining authority and copies thereof supplied to the detenu. On the petitioner's own showing, only that part of the application for grant of bail that the offence in question is bailable, was relevant. (Paras 10, 18 and 19)

The question as to whether an offence is bailable or not is not a vital fact whereupon an order of bail can be passed. Application of mind to the averments made in a bail application may be relevant where the grounds stated therein reveal certain facts which are vital for passing an order of detention. In a case of such nature, it may be said that the application for bail was necessary to be placed before the detaining authority and non-furnishing a copy thereof to the detenu would vitiate the order of detention. (Para 12)

However, whether a provision of law is bailable or not is a question of law. The same is presumed to be known to the courts and/or the detaining authority. It may not be necessary even to be stated in the application for bail. If a person had been released on bail on the ground that the offence is bailable, it would not be necessary to bring the said fact before the detaining authority. The detaining authority will have to satisfy himself on the basis of the materials placed on record, as to whether the order of preventive detention should be passed against the detenu or not. The constitutional mandate can be said to be violated, provided: (*1*) the impairment has been caused to the subjective satisfaction to be arrived at by the detaining authority; and (*2*) if relevant facts had not been considered or the relevant or vital documents have not been placed before the detaining authority. (Para 19)

In the instant case save and except the submission that the offence is bailable in nature, no other contention which was required to be brought to the notice of the detaining authority was put forward. The order of detention had taken note of the fact that the detenu had already been released on bail. It is also not in dispute that a copy of the order granting bail and order of remand had been furnished to the detenu. Therefore, non-furnishing of a copy of the application of bail cannot be said to be a ground which impaired the subjective satisfaction of the detaining authority or the same was a relevant fact which was required to be taken into consideration by him and the application for bail was required to be supplied to the detenu. It is now well settled that all the documents placed before the detaining authority are not required to be supplied; only relevant and vital documents are required to be supplied. (Paras 11, 20 and 21)

As in this case, the application for bail was not a vital document, copy whereof was required to be supplied to the detenu, the order of detention is not vitiated. (Para 22). *Sunila Jain* v. *Union of India*, (2006) 3 SCC 321: (2006) 2 SCC (Cri) 90: 2006 Cri LJ 1636.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 24-2-2006]

M. Ahamedkutty v. Union of India, (1990) 2 SCC 1: 1990 SCC (Cri) 258; P.U. Abdul Rahiman v. Union of India, 1991 Supp (2) SCC 274: 1991 SCC (Cri) 1032; Abdul Sathar Ibrahim Manik v. Union of India, (1992) 1 SCC 1: 1992 SCC (Cri) 1; Johney D'Couto v. State of T.N., (1988) 1 SCC 116: 1988 SCC (Cri) 70; Icchu Devi Choraria v. Union of India, (1980) 4 SCC 531: 1981 SCC (Cri) 25, distinguished

2. COMMUNICATION OF GROUNDS OF DETENTION

Synopsis

(a) Documents and materials to be supplied to detenu

(b) Documents and materials which need not be supplied

(c) Language of communication

(d) Legibility of documents

(a) Documents and materials to be supplied to detenu

[822] — **Self-inculpatory statements purported to have been made by detenu under S. 108 of Customs Act not furnished to detenu — These statements were recorded in extenso in detention order** — *Held, these statements having been relied upon by detaining authority in one part of the order of detention, it cannot be later on stated by the said authority that he was not relying upon the same and therefore, the same need not be supplied to the detenu — Even if original documents were not available with detaining authority, at least xeroxed copies thereof should have been supplied to detenu — In absence of such copies, detention vitiated — COFEPOSA, 1974, S. 3*

What is necessary to be supplied is the relevant and the material documents, but, thus, all relevant documents must be supplied so as to enable the detenu to make an effective representation which is his fundamental right under Article 22(5) of the Constitution of India. Right to make an effective representation is also a statutory right. If the documents were material so as to enable the detenu to make an effective representation which is his constitutional as also statutory right, non-supply thereof would vitiate the order of detention. However, all documents which are not material are not necessary to be supplied. (Paras 30 and 29)

In this case, the statements of the appellant detenu and his colleague were material. They could not have been withheld. These statements were recorded in extenso in the order of detention. Recording of such statement must have been made from the xeroxed copies of such documents which were available with the detaining authority. The self-inculpatory statements of the appellant as also his colleague purported to have been made in terms of Section 108 of the Customs Act were required to be considered before the order of detention could be passed. The same was not done. The original of such documents might not have been available with the detaining authority but admittedly the xeroxed copies were. It has not been denied or disputed that even the xeroxed copies of the said documents had not been supplied to the detenu. It may be true that the appellant in his representation requested for showing him the original documents referred to or mentioned in the grounds of detention but then at least the xeroxed copies thereof should have been made available to him. (Para 27)

The detaining authority moreover while relying on the said documents in one part of the order of detention could not have stated in another part that he was not relying thereupon. The very fact that he had

referred to the said statements in extenso is itself a pointer to the fact that he had relied upon the said documents. Even in the earlier part of the impugned order of detention i.e. detaining authority appears to have drawn its own conclusions. (Para 32). *Adishwar Jain* v. *Union of India*, (2006) 11 SCC 339: (2007) 1 SCC (Cri) 464.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 19-10-2006]

(b) Documents and materials which need not be supplied

[**823**] — **Non-supply, when not fatal** — *Non-supply of document (confession of co-accused) which was merely referred to in grounds of detention without being relied upon for purpose of detention, held, not fatal.* (Paras 7 to 9). *Senthamilselvi* v. *State of T.N.*, (2006) 5 SCC 676: (2006) 3 SCC (Cri) 50.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 9-6-2006]

(c) Language of communication

[**824**] — **Determination of — Consideration of material other than claim of detenu** — *Documents served upon detenu in English language which he did not understand, alleged — Held, material on record establishing that he was conversant with English language and had been corresponding with the authorities concerned in that language — Moreover, the manner in which he was conducting his export business would show that having regard to the large number of documents to be filed and required to be filled, he could not have conducted his business on a large scale without being conversant with English language — Thus detenu knew English language and therefore, service of the documents on him in that language did not violate Art. 22(5) — However, by way of abundant caution translated copies of documents were provided to him within 10 days of his request — COFEPOSA, 1974* (Paras 14 to 16). *Sheetal Manoj Gore* v. *State of Maharashtra*, (2006) 7 SCC 560: (2006) 3 SCC (Cri) 314.

Bench Strength **2**. Coram: **B.P. Singh** and *R.V. Raveendran*, JJ. [Date of decision: 21-8-2006]

(d) Legibility of documents

[**825**] — **Non-supply of legible copies of relevant documents to detenu alleged — However, copies of the documents in question were found to have been sent by detenu himself to the Department concerned** — *Held, illegibility of copies of a portion of the documents which were sent by the detenu, not a ground on which detention can be said to be vitiated — COFEPOSA, 1974, S. 3*

The High Court found that a portion of the documents said to be illegible were copies of the documents which were supplied by the detenu himself, and the Department could do no better than to furnish the copies thereof. If the documents furnished by the detenu to the Department contained some portions or pages which were illegible, obviously the copies thereof furnished by the detaining authority to the detenu will also contain such illegible portions. The contention that if really any document furnished by the detenu was illegible, it could not have been used against the detenu, overlooks the fact that a document may contain several sheets and illegibility of some sheets or parts of some sheets will not come in the way of the authorities making use of the legible portions of the documents furnished by the detenu, supplemented by other documents secured during investigation. There is nothing strange in the Department making use of partially legible documents furnished by detenu. Therefore, illegibility of portions of documents which are copies of documents furnished by the detenu, cannot be a ground for grievance by the detenu. (Para 19). *Usha Agarwal* v. *Union of India*, (2007) 1 SCC 295: (2007) 1 SCC (Cri) 342.

Bench Strength **2**. Coram: *S.H. Kapadia* and **R.V. Raveendran**, JJ. [Date of decision: 2-11-2006]

3. ADVISORY BOARD

Reference to the Board

[**826**] — **Delay in sending some relevant records to the Board — Effect** — *Reference to the Board though made within the statutory period of five weeks from the date of detention, but there was delay of one week, after expiry of the said stipulated period, in sending some relevant records to the Advisory Board — Held, the said delay by itself not sufficient to make the whole reference illegal and vitiated — COFEPOSA, 1974, Ss. 8(b), (c) & 3(1)*

It is true that it is a valuable right of the detenu to have the validity of his detention examined by the Advisory Board. It is a fundamental right of the detenu guaranteed under Article 22 of the Constitution. Any violation of the procedure is to be viewed seriously. But, the delay of only one week in sending some of the relevant records may not by itself make the whole reference illegal and vitiated. Under clause (*c*) of Section 8 of the COFEPOSA Act, a period of eleven weeks from the date of the detention is given to the Advisory Board to give its opinion. The Advisory Board is also empowered to call for any information from the appropriate Government. If the relevant materials were not placed before the Advisory Board at the time it had taken the decision, that would have been a serious violation of the right guaranteed under

Article 22 of the Constitution. The fact that merely because some of the materials were inadvertently not sent along with the reference, will not vitiate the proceedings. (Para 6). *D. Anuradha* v. *Jt. Secy.*, (2006) 5 SCC 142: (2006) 2 SCC (Cri) 432: 2006 Cri LJ 2784.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 24-4-2006]

[827] — **Non-placement of representation sent by wife of detenu before Advisory Board — Challenge to detention order on ground of — Sustainability** — *Besides the said representation, four other representations were also sent on behalf of detenu — All materials available with State Govt. sent to Advisory Board — Said four representations were disposed of in time, though the representation sent by wife was disposed of belatedly — Held, no prejudice caused to detenu due to non-placement of the aforesaid representation before Advisory Board — COFEPOSA, 1974, S. 3(1)* (Para 9). *D. Anuradha* v. *Jt. Secy.*, (2006) 5 SCC 142: (2006) 2 SCC (Cri) 432: 2006 Cri LJ 2784.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 24-4-2006]

4. EVALUATION OF GROUNDS OF DETENTION

(a) Consequence of defect in grounds: vagueness, non-existence, illegality or irrelevancy

[828] — **Effect of vagueness — Vague nature of one of the grounds, held, would not vitiate the entire detention order if there are severable grounds** — *COFEPOSA, 1974, S. 3(1)* (Para 22). *D. Anuradha* v. *Jt. Secy.*, (2006) 5 SCC 142: (2006) 2 SCC (Cri) 432: 2006 Cri LJ 2784.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 24-4-2006]

(b) Non-placement of relevant material before detaining authority

[829] — **Non-placement of some material before detaining authority affecting one of the grounds stated in detention order — Validity of detention order** — *Detention order by itself sufficient to stand on its own on the basis of other grounds — Hence held, detention as a whole could not be said to be illegal — COFEPOSA, 1974, S. 3(1)* (Para 22). *D. Anuradha* v. *Jt. Secy.*, (2006) 5 SCC 142: (2006) 2 SCC (Cri) 432: 2006 Cri LJ 2784.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 24-4-2006]

5. AFFIDAVIT OF GOVERNMENT

[830] — **Infirmities in — Imposition of costs on State for** — *Respondent State twice failing to produce relevant evidence to establish compliance with statutory requirements, and seeking a third opportunity to do so — Opportunity granted, but with imposition of costs of Rs 25,000 to be paid to petitioner detenu — Administrative Law — Law officers — Accountability. Suram Chand* v. *State of J&K*, (2005) 13 SCC 433: (2006) 2 SCC (Cri) 429.

Bench Strength **2**. Coram: *B.P. Singh* and *S.H. Kapadia*, JJ. [Date of decision: 30-8-2005]

6. REPRESENTATION TO APPROPRIATE AUTHORITY/GOVT.

Synopsis

(a) Consideration of representation by appropriate authority independent of reference to Advisory Board
(b) Delay in consideration of representation
(c) Delay in disposal of representation
(d) Determination of appropriate authority
(e) Non-consideration of representation

(a) Consideration of representation by appropriate authority independent of reference to Advisory Board

[831] — **Detenu having constitutional as well as statutory right under COFEPOSA Act to make representation not only before detaining authority but also before Central Govt. and Advisory Board** — *Even if detaining authority and Advisory Board rejected the representation of detenu, Central Govt. is obliged to consider and dispose of the representation expeditiously — Particular Statutes — COFEPOSA, 1974 — Constitution of India — Article 22 — Article 22(5) — Representation to appropriate authority/Govt., Art. 22(5) — Representation — Obligation of Central Govt. to consider, even if rejected by Advisory Board and detaining authority* (Para 24). *Usha Agarwal* v. *Union of India*, (2007) 1 SCC 295: (2007) 1 SCC (Cri) 342.

Bench Strength **2**. Coram: *S.H. Kapadia* and **R.V. Raveendran**, JJ. [Date of decision: 2-11-2006]

Abdul Razak Dawood Dhanani v. Union of India, (2003) 9 SCC 652: 2004 SCC (Cri) 1177, applied

(b) Delay in consideration of representation

[832] — **Delay in disposal of second representation on same ground, held not fatal** — *First representation disposed of by Advisory Board, detaining authority and Central Govt. — Second representation given to Central Govt. only a reiteration of that given earlier to Advisory Board, copies of which were given to detaining authority and Central Govt. — Held, delay in disposing of the subsequent representation or delay in communicating the decision on such representation will not vitiate the order of detention — COFEPOSA, 1974, S. 3* (Para 27). *Usha Agarwal* v. *Union of India*, (2007) 1 SCC 295: (2007) 1 SCC (Cri) 342.

Bench Strength **2**. Coram: *S.H. Kapadia* and **R.V. Raveendran**, JJ. [Date of decision: 2-11-2006]

Abdul Razak Dawood Dhanani v. Union of India, (2003) 9 SCC 652: 2004 SCC (Cri) 1177, applied

(c) Delay in disposal of representation

[833] — **Contention as to (non-) explanation by State — When could not be raised** — *Writ petition filed even before the order of rejection served on detenu — That being so, held, detenu could not make grievance that the State had not explained the position as to how his representation was dealt with — Constitution of India — Article 22 — Article 22(5) — Representation to appropriate authority/Govt.* (Para 6). *Senthamilselvi* v. *State of T.N.*, (2006) 5 SCC 676: (2006) 3 SCC (Cri) 50.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 9-6-2006]

[834] — **Delay when fatal — Duty of authorities to consider representation expeditiously** — *Held, representation sent by detenu must receive immediate attention and the same must be considered by the appropriate authorities as expeditiously as possible — Any delay in that regard would cause prejudice to the detenu — But, delay in disposal of representation, if satisfactorily explained, held, not fatal — Delay of 119 days occurring due to non-availability of translated copy of representation, which was in Tamil language, held, was an unavoidable delay — Said delay satisfactorily explained — Hence, not fatal — However, emphasised that such delays should be avoided — COFEPOSA, 1974, S. 3(1)* (Paras 15 to 17 and 20). *D. Anuradha* v. *Jt. Secy.*, (2006) 5 SCC 142: (2006) 2 SCC (Cri) 432: 2006 Cri LJ 2784.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 24-4-2006]

[835] — **Explanation — If proper and acceptable, continued detention would not be rendered illegal merely because of delay** — *Factors relevant for deciding whether the delay vitiated the detention — On facts, held, delay fully explained and hence detention order valid*

The grounds of detention in this case were a long one running into 35 paragraphs which were accompanied by 82 documents running into 447 pages. The representation made by the appellant was also a fairly long one. The representation made by the appellant on 24-3-1998 was received by the Ministry on 27-3-1998. The comments of the sponsoring authority were called on 30-3-1998 which were received on 17-4-1998. The comments were placed before the Secretary (R) through the ADG on 22-4-1998 (18th and 19th being holidays). The decision of the Central Government was taken and communicated on 29-4-1998 (25th and 26th being holidays). The representation was also considered by the detaining authority in the meantime and was rejected on 21-4-1998. In the additional affidavit filed on behalf of the sponsoring authority before the High Court, it was stated that the representation was received by them on 2-4-1998 and the comments were dispatched on 17-4-1998. During this period, there were holidays on 4th, 5th, 8th to 12th April, and only seven working days were available. Again there were holidays on 18th, 19th, 25th and 26th April. It was contended that the representation made on 24-3-1998 having been rejected by the detaining authority on 21-4-1998 and by the Central Govt. on 29-4-1998 in view of this inordinate delay in the disposal of the representation, the continued detention of the appellant was rendered illegal. Rejecting the contention,

Held :

The contention regarding delay in disposal of the representation cannot be judged by any straitjacket formula divorced from facts. This has to be examined with reference to the facts of each case having regard to the volume and contents of the grounds of detention, the documents supplied along with the grounds, the inquiry to be made by the officers of different departments, the nature of the inquiry, the time required for examining the various pleas raised, the time required in recording the comments by the authorities of the department concerned, and so on. There should be no inaction or lethargy in consideration of the representation and where there is a proper explanation for the time taken in disposal of representation even though it may be long, the continued detention of the detenu would not be rendered illegal in any manner. (Paras 13 and 14)

On facts, the entire time taken in consideration and disposal of the representation made by the appellant has been fully explained and it cannot be said that there was any inordinate delay or unexplained delay in considering the representation made by the appellant. The challenge to the detention order made on the ground of delay in consideration of the representation made by the appellant has no substance and deserves to be rejected. (Para 15). *Vinod K. Chawla* v. *Union of India*, (2006) 7 SCC 337: (2006) 3 SCC (Cri) 270: AIR 2006 SC 2864.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **G.P. Mathur**, JJ. [Date of decision: 18-8-2006]

[836] — **Explanation — Sufficiency of — Time spent in getting representation translated** — *Representation received by Ministry of Home Affairs, Govt. of India in Tamil forwarded to District Magistrate and Collector concerned in Tamil Nadu for getting it translated into English and as soon as translation was received, representation was considered at*

various levels and disposed of promptly — Held on facts, there was no undue and unexplained delay in disposing of the representation

It appears from the counter-affidavit filed on behalf of the Central Govt. that a representation made to the Central Govt. on behalf of the detenu by his mother was submitted in the Ministry of Home Affairs on 4-7-2005 through an advocate. Since it was in Tamil and it could not be deciphered, it was forwarded to the District Magistrate and Collector of Cuddalore District, Tamil Nadu and the Government of Tamil Nadu for getting it translated into English. That was done on 5-7-2005 itself. A reminder was also sent on 13-7-2005. The English translation of the representation was received on 18-7-2005. It was put up before the Under-Secretary on 19-7-2005. The case of the detenu and the representation were carefully considered and the matter was put up before the Deputy Secretary on 21-7-2005. With the comments of the Deputy Secretary it was put up before the Joint Secretary on 21-7-2005 itself. On the same day it was forwarded to the Special Secretary, Ministry of Home Affairs after being considered by the Joint Secretary. The Special Secretary after consideration of the same put up the matter before the Home Secretary on 22-7-2005. The Home Secretary after considering all the relevant aspects, rejected the representation of the detenu on 22-7-2005. The decision was communicated to the detenu through the Home Secretary, Tamil Nadu and Superintendent, Central Prison, Cuddalore, Tamil Nadu by way of crash wireless message dated 25-7-2005. In the light of this affidavit, it was argued that there was an unexplained delay from 13-7-2005 to 18-7-2005 in considering the representation.

Held :

In the circumstances of the case, there was no unexplained delay or undue delay on the part of the Central Government in disposing of the representation made on behalf of the detenu warranting interference. (Para 5). *A. Maimoona* v. *State of T.N.*, (2006) 1 SCC 515: (2006) 1 SCC (Cri) 428: AIR 2006 SC 711: 2006 Cri LJ 560.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.K. Balasubramanyan**, JJ. [Date of decision: 16-12-2005]

[**837**] — **Five representations sent — Except one, all the said representations disposed of in time — Effect** — *Held, the detention order could not be quashed on the ground of delay in disposal of the said one representation — Law that detenu has no right to get his successive representations based on the same grounds rejected earlier to be formally disposed of again, and that in any event no period of limitation is fixed for disposal of an application, taken note of — Constitution of India — Article 22(5) — Particular statutes, Art. 22 — Particular statutes — COFEPOSA, 1974, S. 3(1)* (Paras 16, 17 and 20). *D. Anuradha* v. *Jt. Secy.*, (2006) 5 SCC 142: (2006) 2 SCC (Cri) 432: 2006 Cri LJ 2784.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 24-4-2006]

[**838**] — **Interference by court — Scope — Duty of court** — *Held, if there is no negligence or callous inaction or avoidable red tapism on the facts of the case, the Court would not interfere — But, detention becomes vulnerable when there is remissness, indifference or avoidable delay on the part of the authority — Duty of Court is to see that efficacy of safeguards provided in the law of preventive detention is not lost in mechanical, routine, dull casualness and chill indifference, on the part of the authorities entrusted with their application — There can be no hard-and-fast rule as to the measure of reasonable time for disposal of representation — Each case has to be considered on its facts* (Para 6). *Senthamilselvi* v. *State of T.N.*, (2006) 5 SCC 676: (2006) 3 SCC (Cri) 50.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 9-6-2006]

[**839**] — **Proper pleading in respect of — Need for** — *Delay in disposal of/Alleged in habeas corpus petition filed before Supreme Court — Writ petition was filed soon after order of detention was served on detenu — Alleged delay was not subject-matter of challenge in the writ petition — Held, this aspect would not be examined by Supreme Court — Detenu may challenge the detention on that ground, if so advised* (Para 17). *Sheetal Manoj Gore* v. *State of Maharashtra*, (2006) 7 SCC 560: (2006) 3 SCC (Cri) 314.

Bench Strength **2**. Coram: **B.P. Singh** and *R.V. Raveendran*, JJ. [Date of decision: 21-8-2006]

[**840**] — **Sending of representations to wrong authorities — Delay occurring due to — Whether detenu can take advantage thereof** — *COFEPOSA, 1974, S. 3(1)*

The Supreme Court in an earlier case deprecated the practice of sending representations to various authorities which were not directly or immediately concerned with the detention, and delay, if any, in disposing of such representations shall not be taken advantage of by the detenu. In the present case also, all the representations were not addressed to the authorities concerned. (Para 18). *D. Anuradha* v. *Jt. Secy.*, (2006) 5 SCC 142: (2006) 2 SCC (Cri) 432: 2006 Cri LJ 2784.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 24-4-2006]

[**841**] — **What constitutes delay** — *Representation disposed of by rejection thereof after about 12 days*

from the date of its receipt by the authorities concerned — Held on facts, was dealt with utmost expedition

The order of detention is dated 1-12-2005. The representation was sent on 11-12-2005 which was received by the respondents on 15-12-2005. The details were called for on 16-12-2005 which were received on 20-12-2005. The file was submitted on 21-12-2005 and dealt with by the Under-Secretary and Deputy Secretary on 22-12-2005. The Minister concerned passed an order on 22-12-2005 and the order of rejection which was passed on 27-12-2005 was issued on 28-12-2005 which was sent to the Superintendent of the Jail where the detenu was incarcerated. It was received by the prison authorities and it was served on the detenu on the day it was received by the jail authority. This factual scenario indicates that the representation was dealt with utmost expedition. (Para 6). *Senthamilselvi* v. *State of T.N.*, (2006) 5 SCC 676: (2006) 3 SCC (Cri) 50.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 9-6-2006]

(d) Determination of appropriate authority

See 'Particular Statutes' — Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1985 (12 of 1985), Ss. 3(2) and (3), below, (2006) 10 SCC 725

(e) Non-consideration of representation

[842] — **Non-consideration of one of the several representations — Effect — Six representations made** — *Plea taken that representation dated 25-9-2005 received by the detaining authority on 26-9-2005 had not been considered though the Govt. approved the order of detention only on 2-10-2005 — On verification of the registered post register it was noticed that no representation either from the detenu or on his behalf was received through registered post between 25-9-2005 and 30-9-2005 — Hence, challenge to detention order on basis of the aforesaid plea, not sustainable* (Para 11). *A. Geetha* v. *State of T.N.*, (2006) 7 SCC 603: (2006) 3 SCC (Cri) 324: AIR 2006 SC 3053.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 4-9-2006]

7. PARTICULAR STATUTES

Synopsis

(a) COFEPOSA, 1974
(b) Foreign Trade (Development and Regulation) Act, 1992
(c) J&K Public Safety Act, 1978 (6 of 1978)
(d) Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1985 (12 of 1985)
(e) National Security Act, 1980
(f) Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976
(g) T.N. Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest-Offenders, Goondas, Immoral Traffic-Offenders and Slum-Grabbers Act, 1982 (14 of 1982)

(a) COFEPOSA, 1974

See also 'Communication of grounds of detention' — Language of communication, above, (2006) 7 SCC 560

See also 'Representation to appropriate authority/Govt.' — Consideration of representation by appropriate authority independent of reference to Advisory Board, above, (2007) 1 SCC 295

— S. 3 *See* 'Communication of grounds of detention' — Documents and materials to be supplied to detenu, above, (2006) 11 SCC 339; Legibility of documents, (2007) 1 SCC 295

See also 'Detention order' — Challenge to detention order, above, (2006) 11 SCC 339; Delay in passing detention order, above, (2006) 4 SCC 796; Non-placement of relevant material before detaining authority, above, (2006) 4 SCC 796; Pre-execution challenge to detention order, above, (2006) 4 SCC 796; Subjective satisfaction of detaining authority, (2007) 1 SCC 295; (2006) 11 SCC 339

See also 'Representation to appropriate authority/Govt.' — Delay in consideration of representation, above, (2007) 1 SCC 295

— Ss. 3 and 8 *See* 'Particular Statutes' — Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1985 (12 of 1985), Ss. 3(2) and (3), above, (2006) 10 SCC 725

— S. 3(1) *See* 'Advisory Board' — Reference to the Board, above, (2006) 5 SCC 142

See also 'Detention order' — Application/Non-application of mind, above, (2006) 7 SCC 560; Bar to passing of detention order, above, (2006) 5 SCC 142; Delay in passing detention order, above, (2006) 5 SCC 142; Non-placement of relevant material before detaining authority, above, (2006) 5 SCC 142; Subjective satisfaction of Detaining Authority, above, (2006) 7 SCC 337

See also 'Evaluation of grounds of detention' — Consequence of defect in grounds: vagueness, non-existence, illegality or irrelevancy, above, (2006) 5 SCC 142; Non-placement of relevant material before detaining authority, above, (2006) 5 SCC 142

See also 'Representation to appropriate authority/Govt.' — Delay in disposal of representation, above, (2006) 5 SCC 142

— S. 3(1)(I) *See* 'Detention order' — Detenu already in jail or custody, above, (2006) 6 SCC 64; Non-placement of relevant material before detaining authority, above, (2006) 4 SCC 792

— Ss. 8(b), (c) & 3(1) *See* 'Advisory Board' — Reference to the Board, above, (2006) 5 SCC 142

(b) Foreign Trade (Development and Regulation) Act, 1992

— **Ss. 9(4), 10 and 11** *See* 'Detention order' — Delay in passing detention order, above, (2006) 4 SCC 796; Non-placement of relevant material before detaining authority, above, (2006) 4 SCC 796; Pre-execution challenge to detention order, above, (2006) 4 SCC 796

(c) J&K Public Safety Act, 1978 (6 of 1978)

See 'Detention order' — Application/Non-application of mind, above, (2005) 13 SCC 172

(d) Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1985 (12 of 1985)

[843] — **Ss. 3(2) and (3) — Representation before appropriate authority/Govt. — If the appropriate authority is indicated in the grounds of detention, representation must be made before that very authority** — *Where detention order was passed under S. 3(2) of the Karnataka Act, detenu had a right to make a representation before the detaining authority so long the order is not approved by State Govt. under S. 3(3) — But the moment State Govt. passed the order approving the detention, the detaining authority became functus officio — In the grounds of detention it was specifically indicated that detenu desirous of making representation should submit the same directly to State Govt. through Superintendent of the Jail in which he was detained, but detenu despite such knowledge submitted his representation to detaining authority after approval order under S. 3(3) was passed by State Govt., without making any request to send its copy to State Govt. — Detaining authority, held, rightly rejected the representation — Contention that detaining authority having become functus officio the moment State Govt. accorded approval detaining authority should not have dealt with the representation and should have instead transmitted to State Govt. for consideration, held, not acceptable — Detenu failed to avail opportunity to make representation to the State Govt. — Order of detention can be revoked only on the basis of a representation to the appropriate authority — Position under Ss. 3 and 8 of COFEPOSA Act considered and distinguished — Representation before appropriate authority/Govt. — Determination of appropriate authority. Sri Anand Hanumathsa Katare* v. *ADM*, (2006) 10 SCC 725: (2007) 1 SCC (Cri) 102.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 19-10-2006]

Veeramani v. State of T.N., (1994) 2 SCC 337: 1994 SCC (Cri) 482; State of Maharashtra v. Santosh Shankar Acharya, (2000) 7 SCC 463: 2000 SCC (Cri) 1400, harmonised

(e) National Security Act, 1980

— **S. 3(2)** *See* 'Detention order' — Judicial review/Validity, above, (2006) 1 SCC 515

(f) Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976

See 'Detention order' — Challenge to detention order, above, (2006) 11 SCC 339

(g) T.N. Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest-Offenders, Goondas, Immoral Traffic-Offenders and Slum-Grabbers Act, 1982 (14 of 1982)

See also 'Detention order' — Subjective satisfaction of detaining authority, above, (2006) 9 SCC 711

— **Ss. 2(f) & 3(1)** *See* 'Detention order' — Application/Non-application of mind, above, (2006) 6 SCC 14

— **S. 3(1)** *See* 'Detention order' — Detenu already in jail or custody, above, (2006) 2 SCC 664; Judicial review/Validity, above, (2006) 7 SCC 540

— **Ss. 3(2), (1), 4(1), 5(1), 6(1) and 7(1)** *See* 'Detention order' — Detenu already in jail or custody, above, (2006) 7 SCC 603

PRISONS

Synopsis

1. Furlough
2. Parole
3. Prisons Act, 1894
4. Prisons (Bombay Furlough and Parole) Rules, 1959

1. FURLOUGH

[844] — **Purpose of — Conditions for grant of — Distinguished from parole** — *Conditions in R. 6, Bombay Furlough and Parole Rules are: (1) readiness of a relative to receive the prisoner, and (2) relative's willingness to enter into a surety bond — On facts, held conditions not met — Further, requirement under R. 4(4) of the Bombay Furlough Rules also not met since there was no recommendation for his release — Held, the conditions under Rr. 4(4) and 6 not having been met, High Court's decision is indefensible and set aside — Prisons Act, 1894, Ss. 3(5-A), 59(28) & (5) — Prisons (Bombay Furlough and Parole) Rules, 1959, Rr. 4(4) and 6*

The expression "furlough system" is defined in clause (5-A) of Section 3 of the Prisons Act, while the expression "parole system" is defined in clause (5-B) of the said provision. The underlying object of the Bombay Furlough and Parole Rules relating to "parole" and "furlough" have been mentioned in the report submitted by All-India Jail Manual Committee and the objects mentioned in Model Prison Manual. The "furlough" and "parole" have two different purposes. It is not necessary to state the reasons while releasing the prisoner on furlough, but in case of parole reasons are to be indicated in terms of Rule 19.

But release on furlough cannot be said to be an absolute right of the prisoner as culled out from Rule 17. It is subject to the conditions mentioned in Rules 4(4) and 6. Furlough is allowed periodically under Rule 3 irrespective of any particular reason merely with a view to enable the prisoner to have family association, family and social ties and to avoid ill-effect of continuous prison life. Period of furlough is treated as a period spent in the prison. But Rule 20 shows that period spent on parole is not to be counted as remission of sentence. Since the furlough is granted for no particular reason, it can be denied in the interest of society; whereas parole is to be granted only on sufficient cause being shown. (Para 5)

The twin requirements flowing from Rule 6 are: (*a*) a relative of the applicant should be willing to receive him while on furlough, and (*b*) he must be ready to enter into a surety bond. Even if it is held for the sake of argument that furnishing of surety of any amount lying in deposit with the jail authorities can be construed to be in compliance with the requirements of Rule 6, Rule 4(4) mandates that the prisoner who seeks to be released cannot be released if not recommended by the authority concerned on the ground of public peace and tranquillity. (Paras 8 and 9)

In the instant case, the relatives refused to execute such surety bond. The verification reports received by the police from the District Magistrate, Amravati and Superintendent of Police, Amravati indicate that the sister of the respondent refused to stand surety as the respondent allegedly committed rape on his stepmother and has been convicted for offences punishable under Sections 376 and 354 of the Penal Code, 1860 and sentenced to suffer imprisonment for seven years with fine. In view of the adverse police report and non-compliance with the requirements stipulated under Rules 4(4) and 6, the competent authority rejected the application for grant of furlough. (Para 8)

However, the High Court erred in directing that he can be released on furnishing surety of amount lying in deposit with the jail authorities. That is not the only condition for release on furlough. The High Court has not recorded any finding that the report of the District Magistrate and/or the Superintendent of Police had not objected to the release on furlough on the ground of public peace and tranquillity. (Para 9)

Looked at from any angle, the High Court's order is indefensible. The same is set aside. It is, however, open to the respondent to apply for release on fulfilment of the requisite conditions as prescribed in the Rules. The same shall be considered in its own perspective in accordance with law. (Para 10). *State of Maharashtra* v. *Suresh Pandurang Darvakar*, (2006) 4 SCC 776: (2006) 2 SCC (Cri) 411: AIR 2006 SC 2471: 2006 Cri LJ 3279.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 13-4-2006]

2. PAROLE

See 'Furlough', above, (2006) 4 SCC 776

3. PRISONS ACT, 1894

— Ss. 3(5-A), 59(28) & (5) *See* 'Furlough', above, (2006) 4 SCC 776

4. PRISONS (BOMBAY FURLOUGH AND PAROLE) RULES, 1959

— Rr. 4(4) and 6 *See* 'Furlough', above, (2006) 4 SCC 776

PROBATION OF OFFENDERS

PROBATION OF OFFENDERS ACT, 1958

— S. 4 *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 362 and 360, (2006) 5 SCC 396

[845] **— S. 4 — Applicability of provisions of the 1958 Act vis-à-vis Ss. 360 & 361 CrPC** — *Held, where provisions of the 1958 Act apply resort to S. 360 CrPC not to be made — Enforcement of the 1958 Act in some particular area excludes the applicability of the provisions of Ss. 360 & 361 CrPC in that area — Distinguishing provisions of S. 360 CrPC from those of the 1958 Act, held, the two statutes (i.e. the 1958 Act and CrPC) with such significant differences could not be intended to coexist at the same time in the same area — Such coexistence would lead to anomalous results — Criminal Procedure Code, 1973, Ss. 360 & 361 — General Clauses Act, 1897, S. 8(1) — Criminal Procedure Code, 1898, Ss. 380 and 562 to 564*

Where the provisions of the Probation Act are applicable the employment of Section 360 CrPC is not to be made. In cases of such application, it would be an illegality resulting in highly undesirable consequences, which the legislature, that gave birth to the Probation Act and the Code, wanted to obviate. The provisions of the Probation Act have a paramountcy of their own in the respective areas where they are applicable. (Para 6)

In comparison to Section 360 CrPC, the scope of Section 4 of the Probation Act is much wider. It applies to any person found guilty of having committed an offence not punishable with death or imprisonment for life. Further, Section 360 does not provide for any role for the probation officers in assisting the courts in relation to supervision and other matters while the Probation Act does make such a provision. That apart, while Section 12 of the Probation Act states that the person found guilty of an offence and dealt with under Section 3 or 4 of the said Act shall not suffer disqualification, if any, attached to

conviction of an offence under any law, the Code does not contain any such parallel provision. Two statutes with such significant differences could not be intended to coexist at the same time in the same area. Such coexistence would lead to anomalous results. The intention to retain the provisions of Section 360 CrPC and the provisions of the Probation Act as applicable at the same time in a given area cannot be gathered from the provisions of Section 360 or any other provision of the Code of Criminal Procedure. Therefore, by virtue of Section 8(1) of the General Clauses Act, where the provisions of the Act have been brought into force, the provisions of Section 360 CrPC are wholly inapplicable. Enforcement of the Probation Act in some particular area excludes the applicability of the provisions of Sections 360 and 361 CrPC in that area. (Paras 7 and 8). *Daljit Singh* v. *State of Punjab*, (2006) 6 SCC 159: (2006) 3 SCC (Cri) 20.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 27-7-2006]

[846] — S. 4 — Release of offender on probation of good conduct — Applicability of the 1958 Act or S. 360 CrPC not considered by High Court — Effect — *Hence, matter remitted to High Court for consideration thereof — Criminal Procedure Code, 1973, S. 360 — Criminal Procedure Code, 1898, Ss. 380 and 562 to 564* (Para 9). *Daljit Singh* v. *State of Punjab*, (2006) 6 SCC 159: (2006) 3 SCC (Cri) 20.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 27-7-2006]

[847] — S. 4 — Scope and applicability of provisions of the 1958 Act vis-à-vis provisions of Ss. 360 & 361 CrPC — *Held, where provisions of the 1958 Act apply resort to S. 360 CrPC is not required — Enforcement of the 1958 Act in some particular area excludes the applicability of the provisions of Ss. 360 & 361 CrPC in that area — Distinguishing the provisions of S. 360 CrPC from those of the 1958 Act, held, the two statutes (i.e. 1958 Act and CrPC) with such significant differences could not be intended to coexist at the same time in the same area — Such coexistence would lead to anomalous results — Criminal Procedure Code, 1973, Ss. 360 & 361 — Criminal Procedure Code, 1898, Ss. 380 and 562 to 564 — General Clauses Act, 1897, S. 8(1)*

Where the provisions of the Probation Act are applicable the employment of Section 360 of the Criminal Procedure Code is not to be made. In cases of such application, it would be an illegality resulting in highly undesirable consequences, which the legislature, that gave birth to the Probation Act and the Code wanted to obviate. The provisions of the Probation Act have a paramountcy of their own in the respective areas where they are applicable. (Para 6)

In comparison to Section 360 CrPC, the scope of Section 4 of the Probation Act is much wider. It applies to any person found guilty of having committed an offence not punishable with death or imprisonment for life. Further, Section 360 does not provide for any role for probation officers in assisting the courts in relation to supervision and other matters while the Probation Act does make such a provision. That apart, while Section 12 of the Probation Act states that the person found guilty of an offence and dealt with under Section 3 or 4 of the said Act shall not suffer disqualification, if any, attached to conviction of an offence under any law, the Code does not contain parallel provision. Two statutes with such significant differences could not be intended to coexist at the same time in the same area. Such coexistence would lead to anomalous results. The intention to retain the provisions of Section 360 CrPC and the provisions of the Probation Act as applicable at the same time in a given area cannot be gathered from the provisions of Section 360 or any other provision of the Code of Criminal Procedure. Therefore, by virtue of Section 8(1) of the General Clauses Act, where the provisions of the Probation Act have been brought into force, the provisions of Section 360 CrPC are wholly inapplicable. Enforcement of the Probation Act in some particular area excludes the applicability of the provisions of Sections 360 and 361 CrPC in that area. (Paras 7 and 8). *Chhanni* v. *State of U.P.*, (2006) 5 SCC 396: (2006) 2 SCC (Cri) 466.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 6-7-2006]

[848] — Ss. 4 and 3 — Nature of power under — *Power under, held, discretionary in nature which court required to exercise having regard to the nature and gravity of the offence, impact of the offence on the victim, his character and overall circumstances of the case — Power can be exercised at appellate or revisional stage or even while hearing appeal under Art. 136 — Constitution of India, Art. 136*

According to the prosecution, when wife of PW 5 was proceeding towards the market, she fell in a ditch, filled with water. She made hue and cry as to who had dug the ditch. On this A-1 replied that he had done it. When the lady scolded A-1, he assaulted her with fists. She cried for help and her husband PW 5 and son PW 4 rushed to the spot. Seeing them A-1 came with a sword along with A-2. A-2 took the sword from A-1 and gave blows on the head of PW 5 and PW 4 causing sharp cuts on left side of the head of both of them. However, A-1 assaulted PWs 4 and 5 with a danda causing simple injuries. The courts below concur-

rently found both the accused guilty and convicted and sentenced them to imprisonment for three months under Section 323 IPC and six months under Section 324 IPC r/w Section 34 IPC. It was submitted that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it is expedient to release the accused persons on probation by the Supreme Court.

Held :

The three courts have already held that the prosecution has proved its case by cogent evidence and there is no ground to take a different view in the matter and acquit the accused-appellants. (Para 6)

However, it is apparent that the incident occurred on the spur of the moment and is traverse in nature. There is no material on record to indicate that the appellants have any previous conviction. In the absence of such evidence, accused-appellants can be treated as first offenders. A-1 had made the assault using danda and fists and caused simple injuries to the PWs. But the case of A-2 is different. He caused head injuries using the sword. Having regard to the aforesaid circumstances and taking an overall view of the matter, A-1 is entitled to the benefit under Section 4 of the Probation of Offenders Act. Therefore, while confirming his conviction, he is directed to be released on probation on his entering into a bond for Rs 10,000 within a period of three weeks from today before the Court of SDJM (Sadar), Sitamarhi, for keeping peace and good behaviour. The appeal of A-2 is dismissed and he would surrender forthwith. (Paras 9 and 10).
Sitaram Paswan v. *State of Bihar*, (2005) 13 SCC 110: (2006) 1 SCC (Cri) 787: AIR 2005 SC 3534: 2005 Cri LJ 4135.

Bench Strength **2**. Coram: *Ashok Bhan* and **P.P. Naolekar**, JJ. [Date of decision: 19-9-2005]

— Ss. 18 and 19 — Grant of probation for offence(s) committed under S. 13, Prevention of Corruption Act, 1988 — Impermissibility *See* PREVENTION OF CORRUPTION ACT, 1988, S. 13, (2006) 11 SCC 473

PROPERTY LAW

Synopsis

1. Charge over Property
2. Hypothecation
3. Mortgage
4. Ownership and Title

1. CHARGE OVER PROPERTY

See PENAL CODE, 1860, S. 405, (2006) 6 SCC 736

2. HYPOTHECATION

[849] — Meaning — Ownership and possession of the property hypothecated remain with the debtor-owner — *Creditor does not get any beneficial interest in the property — Creditor only gets a charge over the property and a right to take possession and sell the property to recover the dues — Words "beneficial interest", "floating charge" and "fixed charge" — Meaning of*

The question is whether there is "entrustment" in an hypothecation? Hypothecation is a mode of creating a security without delivery of title or possession. Both, ownership of the movable property and possession thereof, remain with the debtor. The creditor has an equitable charge over the property and is given a right to take possession and sell the hypothecated movables to recover his dues (Note: no opinion is being expressed on the question whether possession can be taken by the creditor, without or with recourse to a court of law). The creditor may also have the right to claim payment from the sale proceeds (if such proceeds are identifiable and available). But there is no "entrustment of the property" or "entrustment of dominion over the property" by the hypothecatee (creditor) to the hypothecator (debtor) in an hypothecation. When possession has remained with the debtor/owner and when the creditor has neither ownership nor beneficial interest, obviously there cannot be any entrustment by the creditor. (Para 25)

The allegations in the complaints are that aircrafts and the engines fitted therein belong to NEPC India. Possession of the aircraft, neither actual nor symbolic, was delivered to IOC. As the possession of the aircraft remained all along with NEPC India in its capacity as the owner and the deed of hypothecation merely created a charge over the aircrafts with a right to take possession in the event of default, it cannot be said that there was either entrustment of the aircrafts or entrustment of the dominion over the aircrafts by IOC to NEPC India. The very first requirement of Section 405, that is, the person accused of criminal breach of trust must have been "entrusted with the property" or "entrusted with any dominion over property" is, therefore, absent. (Para 27)

It is not possible to accept the contention that *Duncans Agro* decision itself recognises that there can be criminal breach of trust where a beneficial interest exists in the other person, and the offender holds the property in trust for such person and that when the deed of hypothecation was executed by NEPC India in favour of IOC, the hypothecation created a beneficial interest in the property in favour of IOC, and vis-à-vis such "beneficial interest" of IOC, the possession of the property by NEPC India was in "trust". The Supreme Court in *Duncans Agro* specifically held that when goods are hypothecated, the owner does not hold the goods in trust for the creditor. A charge over the hypothecated goods in favour of the creditor cannot be said to create a beneficial interest in

the creditor, until and unless the creditor in exercise of his rights under the deed, takes possession. The term "beneficial interest" has a specific meaning and connotation. When a trust is created vesting a property in the trustee, the right of the beneficiary against the trustee (who is the owner of the trust property) is known as the "beneficial interest". The trustee has the power of management and the beneficiary has the right of enjoyment. Whenever there is a breach of any duty imposed on the trustee with reference to the trust property or the beneficiary, he commits a breach of trust. On the other hand, when the owner of a goods hypothecates a movable property in favour of a creditor, no "beneficial interest" is created in favour of the creditor nor does the owner become a trustee in regard to the property hypothecated. The right of the creditor under a deed of hypothecation is the right to enforce the charge created under the deed of hypothecation in the manner specified in the deed and by no stretch of imagination can such right be equated to a beneficial interest of a beneficiary in a property held in trust. Therefore, the contention that a creditor has a beneficial interest in the hypothecated property and the owner is in the position of a trustee with reference to the creditor is liable to be rejected. (Paras 28 and 29)

There is also no basis for the further submission that *Duncans Agro* case dealt with a hypothecation deed creating a floating charge, whereas the case on hand related to a fixed charge and therefore, the principle laid down in *Duncans Agro*, (1996) 5 SCC 591, will not apply. The principle stated in *Duncans Agro* will apply in regard to all types of hypothecations. It makes no difference whether the charge created by the deed of hypothecation is a floating charge or a fixed charge. Where a specific existing property is hypothecated, what is created is a "fixed" charge. The floating charge refers to a charge created generally against the assets held by the debtor at any given point of time during the subsistence of the deed of hypothecation. The principle in *Duncans Agro* is based on the requirement of "entrustment" and not with reference to the "floating" nature of the charge. (Para 30)

Accordingly, it must be held that the basic and very first ingredient of criminal breach of trust, that is, entrustment, is missing and therefore, even if all the allegations in the complaint are taken at their face value as true, no case of "criminal breach of trust" as defined under Section 405 IPC can be made out against NEPC India. (Para 31). *Indian Oil Corpn.* v. *NEPC India Ltd.*, (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188: AIR 2006 SC 2780: (2006) 2 Guj LH 753.

Bench Strength **2**. Coram: *H.K. Sema* and **R.V. Raveendran**, JJ. [Date of decision: 20-7-2006]

Gobindram C. Motwani v. Emperor, (1938) 39 Cri LJ 509: AIR 1938 Sind 73, distinguished

3. MORTGAGE

— Equitable mortgage — Creation of — Mode of *See* TRANSFER OF PROPERTY ACT, 1882, S. 58, (2006) 1 SCC 697

— Equitable mortgage — Proper mode of creation of *See* TRANSFER OF PROPERTY ACT, 1882, S. 58, (2006) 1 SCC 697

4. OWNERSHIP AND TITLE

[850] — Sale after theft of property — If can convey title in property — Maxim *nemo dat quod non habet* i.e. no one can convey a better title than what he had — Applicability — *Held, High Court wrongly ordered release of stolen vehicle to buyer thereof in teeth of claim by its original registered owner — Said vehicle directed to be released to said owner during pendency of trial — Nemo dat quod non habet — Applicability. Nitin Gupta* v. *State of Meghalaya*, (2005) 13 SCC 686: (2006) 2 SCC (Cri) 290.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 12-8-2005]

PROSECUTION

See CRIMINAL TRIAL

See also ELECTRICITY

PROSECUTION OF PEOPLE IN POWER/POLITICIANS

See PUBLIC ACCOUNTABILITY AND VIGILANCE

PROSECUTRIX

See CRIMINAL TRIAL — 'Witnesses'

PUBLIC ACCOUNTABILITY AND VIGILANCE

Synopsis

1. Generally
2. Abuse of Power
3. Central Vigilance Commission Act, 2003
4. Corruption
5. Government Departments/PSUs
6. Prosecution of People in Power/Politicians
7. Rule of Law
8. Vigilance Authorities
   CBI

1. GENERALLY

— Award of exemplary punishment in contempt proceedings to high government officials to uphold rule of law *See* CONTEMPT OF COURT — 'Contempt of Courts Act, 1971', S. 12, (2006) 5 SCC 1

2. ABUSE OF POWER

— Enforcement of law against — Appointment of independent judges to try cases against — Directions issued by Supreme Court in PIL under Art. 32 of Constitution *See* CONSTITUTION OF INDIA — 'Article 32' — Public Interest Litigation/PIL, Arts. 32 and 233, (2006) 1 SCC 356

3. CENTRAL VIGILANCE COMMISSION ACT, 2003

— **S. 8** *See* CONSTITUTION OF INDIA, Arts. 142 and 144, (2007) 1 SCC 141

— **S. 8 — Nature of opinion given by CVC on its assistance being sought by Supreme Court for doing complete justice** *See* CONSTITUTION OF INDIA, Arts. 142 and 144, (2007) 1 SCC 110

4. CORRUPTION

— **Involvement of Govt. officers — Monitoring of disciplinary action by Supreme Court** *See* CONSTITUTION OF INDIA — 'Article 32' — Public Interest Litigation/PIL, Art. 32, (2007) 1 SCC 136; (2007) 1 SCC 137

— **Power of CBI to investigate** *See* 'Vigilance Authorities' — CBI, below, (2007) 1 SCC 110

5. GOVERNMENT DEPARTMENTS/PSUs

— **Law officers — Accountability — Imposition of costs for not showing due diligence** *See* PREVENTIVE DETENTION — 'Affidavit of Government', (2005) 13 SCC 433

6. PROSECUTION OF PEOPLE IN POWER/POLITICIANS

— **Ensuring fair trial** *See* CONSTITUTION OF INDIA — 'Article 32' — Public Interest Litigation/PIL, Arts. 32 and 233, (2006) 1 SCC 359

7. RULE OF LAW

— **Prosecution of people in power/Highly influential political personalities — Non-interference with denial of bail by High Court** *See* CONSTITUTION OF INDIA — 'Article 136' — Scope of interference — Interference in criminal matters — Bail denied, Arts. 136 and 32, (2005) 13 SCC 688

8. VIGILANCE AUTHORITIES

CBI

[851] — Power to investigate charges of corruption against public servants — Held (per Sinha, J.), the 1946 Act applies to such cases — *Corruption — Power of CBI to investigate — Delhi Special Police Establishment Act, 1946 (25 of 1946), S. 3*

Per Sinha, J. (concurring)

The Delhi Special Police Establishment Act, 1946 indisputably applies in regard to charges of corruption made against public servants. The CBI Manual is subject to the provisions of Criminal Procedure Code. In case of conflict, although none has been pointed out in the present case, evidently, CrPC shall prevail. (Paras 38 and 43)

Subject to the above, the opinion expressed by the learned Brother Kapadia, J. is concurred with. (Para 49). *M.C. Mehta (Taj Corridor Scam)* v. *Union of India*, (2007) 1 SCC 110: (2007) 1 SCC (Cri) 264.

Bench Strength **3**. Coram: **S.B. Sinha[2], S.H. Kapadia[1]** and *D.K. Jain*[1], JJ. [Date of decision: 27-11-2006]

[852] — Powers of investigation of — Norms governing — Offences committed under PC Act, 1988 — *Once jurisdiction is conferred on CBI to investigate an offence by notification under S. 3, 1946 Act, held (per curiam), CBI's powers of investigation are governed by the statutory provisions under the general law applicable to such investigation and cannot be curtailed by any executive instruction issued under S. 4(1), 1946 Act — Further, CBI Manual is subject to provisions of CrPC — In case of conflict, CrPC shall prevail — Delhi Special Police Establishment Act, 1946 (25 of 1946), Ss. 3 and 4 — Prevention of Corruption Act, 1988, S. 22*

Per Kapadia, J. (for himself and Jain, J.) (Sinha, J. concurring)

Once the jurisdiction is conferred on CBI to investigate an offence by virtue of a notification under Section 3 the Delhi Special Police Establishment Act, 1946 the powers of investigation are governed by the statutory provisions under the general law applicable to such investigation and they cannot be curtailed by any executive instruction issued under Section 4(1) of the 1946 Act. (Paras 25 and 24). *M.C. Mehta (Taj Corridor Scam)* v. *Union of India*, (2007) 1 SCC 110: (2007) 1 SCC (Cri) 264.

Bench Strength **3**. Coram: **S.B. Sinha[2], S.H. Kapadia[1]** and *D.K. Jain*[1], JJ. [Date of decision: 27-11-2006]

Vineet Narain v. Union of India, (1998) 1 SCC 226: 1998 SCC (Cri) 307; Union of India v. Prakash P. Hinduja, (2003) 6 SCC 195: 2003 SCC (Cri) 1314, followed

[853] — Where CBI incharge of an investigation, question whether accused/cases to be sent to Magistrate/Special Judge for trial — Determination of — *Referral of matter to Attorney General for India where there is a "difference of opinion amongst CBI officers" — Requirements of — Said difference of opinion to be between which officers, and opinions formed on what basis — Applicability of cls. 6.1 and 19.15, CBI (Crime) Manual, 2005 — Held (per curiam), the opinions concerned should be of officers who form part of the administrative hierarchy of CBI and should not be based on an interpretation of legal evidence, but should have been formed in the manner prescribed under S. 170, CrPC — In present case (Taj Corridor Scam), there being no difference of opinion satisfying the above requirements, entire material collected by CBI along with report of the SP, keeping in view scheme of Ss. 168 to 170 and 173 CrPC, directed to be placed before the court/Special Judge concerned in terms of S. 173(2) CrPC — Clarified that none of the other opinions/recommendations including that of the Attorney General or CVC to be forwarded to said court/Judge — Repeated failure of governmental authorities to perform their statutory duties, deprecated — Observed, if this continued, rule of law would stand reduced to "a rope of sand" — Prevention of Corruption Act, 1988, S. 22*

The issue that arose for determination before the Supreme Court was whether on the facts and the circumstance of this case, the Director, CBI, who had not given his own independent opinion as to whether the filing of a charge-sheet was warranted on the facts, was right in referring the matter for opinion to the Attorney General for India, based only on the dissenting opinion of the Director of Prosecution, whose opinion was also based on the interpretation of the legal evidence, which stage has not even arrived, when the entire CBI investigation and law officers' team was *ad idem* in its opinion on filing of the charge-sheet.

Answering the question in the negative and disposing of the applications in the terms below, the Supreme Court

Held :

Per Kapadia, J. (for himself and Jain, J.) (Sinha, J. concurring)

Under the CBI Manual, the officer in charge of the police station is the SP. In this connection clauses 6.1 and 19.15 of the CBI (Crime) Manual, 2005 which though the Manual not being binding on the Supreme Court in Supreme Court monitored CBI cases, nonetheless throws light on the controversy in hand. (Para 31)

As held in *Sushil Kumar Modi case*, (1996) 6 SCC 500, in case of any difference of opinion between officers of CBI in respect of the investigation, the final decision would not be taken by the Director himself or by the Director merely on the opinion of the Legal Department of CBI, but the matter would be decided according to the opinion of the Attorney General for India for the purpose of investigation and filing of the charge-sheet against any individual. In that event, the opinion would be sought from the Attorney General after making available to him the opinions expressed on the subject by the persons associated with the investigation as a part of the materials. (Para 22)

The entire investigating team as well as the law officers of CBI were *ad idem* in their mind. They had recommended prosecution. It was only the Director of Prosecution and the Senior Public Prosecutor who had opined that a closure report should be filed. It may be noted that the Senior Public Prosecutor does not find place in clause 6.1 of the CBI Manual which refers to the administrative hierarchy of CBI. Further, the Director of Prosecution is the only CBI officer who had dissented from the opinion of the investigating team including the SP. It appears that this opinion is also based only on interpretation of legal evidence. Moreover, as can be seen from the status report dated 31-12-2004, the Director, CBI has not given his independent opinion. He has merely relied upon the opinion of the Attorney General. The Director, CBI expressing an opinion and then referring the matter to the Attorney General can be understood. However, under the above circumstances there was no difference of opinion in the matter of investigation between the officers concerned of CBI and, therefore, there was no question of the Director, CBI referring the matter to the Attorney General for India. (Para 32)

It cannot be understood why an opinion of Senior Public Prosecutor had been taken in the present case. He is not a member of the hierarchy. The SP is not legally obliged to take his opinion. In the circumstances, when there was no difference of opinion in the team concerned, the question of seeking opinion of the Attorney General did not arise. Lastly, even under clause 19.15 of the CBI Manual it is expressly stated that the report of the SP should be prepared personally by the SP and that the internal differences of opinion among CBI officers should not find place in the SP's report. (Para 32)

Keeping in mind the scheme of Sections 168 to 170 and 173 CrPC, in the facts and circumstances of this case the entire material collected by CBI along with the report of the SP is directed to be placed before the court/Special Judge concerned in terms of Section 173(2) CrPC. The decision to accept or reject the report of the SP shall be that of the court/Special Judge concerned, who will decide the matter in accordance with law. It is made clear that none of the other opinions/recommendations including that of the Attorney General for India or the CVC shall be forwarded to the court/Special Judge concerned. (Paras 32 and 34)

In an earlier order the Supreme Court had given time to CBI to complete legal scrutiny when the Supreme Court had been told that there was a difference of opinion in the administrative hierarchy of CBI. However, after going through the recommendations of the above officers, as it has been found that there was no difference of opinion of the officers concerned there was no question of reference to the Attorney General. The status report dated 31-12-2004 is rejected as it is a charade of the performance of duty by CBI. Thus, a case for judicial review is made out. (Para 33)

In matters after matters, it is found that the efficacy and ethics of the governmental authorities are progressively coming under challenge before the Supreme Court by way of PIL for failure to perform their statutory duties. If this continues, a day might come when the rule of law will stand reduced to "a rope of sand". (Para 35). *M.C. Mehta (Taj Corridor Scam)* v. *Union of India*, (2007) 1 SCC 110: (2007) 1 SCC (Cri) 264.

Bench Strength 3. Coram: **S.B. Sinha**[2], **S.H. Kapadia**[1] and *D.K. Jain*[1], JJ. [Date of decision: 27-11-2006]

H.N. Rishbud v. State of Delhi, AIR 1955 SC 196: (1955) 1 SCR 1150: 1955 Cri LJ 526; Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117: (1967) 3 SCR 668: 1968 Cri LJ 97; R. Sarala v. T.S. Velu, (2000) 4 SCC 459: 2000 SCC (Cri) 823; Union of India v. Sushil Kumar Modi, (1996) 6 SCC 500; Union of India v. Sushil Kumar Modi, (1997) 4 SCC 770, followed

RAPE

See CRIMES AGAINST WOMEN AND CHILDREN

See also MEDICAL JURISPRUDENCE

RAPE BY PERSONS IN POSITION OF AUTHORITY

See CRIMES AGAINST WOMEN AND CHILDREN

RAPE OF MINORS

See CRIMES AGAINST WOMEN AND CHILDREN

RAPE OF PREGNANT WOMAN

See CRIMES AGAINST WOMEN AND CHILDREN

REDUCTION OF SENTENCE

See CRIMINAL TRIAL — 'Sentence'

RELATED WITNESS

See CRIMINAL TRIAL — 'Witnesses'

REPRESENTATION BEFORE APPROPRIATE AUTHORITY/GOVT.

See PREVENTIVE DETENTION

RIGHT TO LIFE

See CONSTITUTION OF INDIA — 'Article 21'

RULE OF LAW

See also CONSTITUTION OF INDIA — 'Article 21' — Fair and open trial, Arts. 21 and 14, (2006) 3 SCC 374

See also CRIMINAL TRIAL — 'Generally', (2006) 3 SCC 374

See also PUBLIC ACCOUNTABILITY AND VIGILANCE

— Advocates — Role of *See* ADVOCATES — 'Advocates Act, 1961', Ss. 6 and 7, 35, 36 and 37, (2006) 9 SCC 295

— Criminal cases involving large scale scams — Judge(s) appointed to try — Significance of — Interference by Supreme Court in PIL under Art. 32 *See* CONSTITUTION OF INDIA — 'Article 32' — Public Interest Litigation/PIL, Arts. 32, 233 and 235, (2006) 6 SCC 613

[854] — Enforcement of — Politically and/or financially influential persons — Enforcement of law against, despite their attempts to coerce/buy witnesses to turn hostile — Role of courts in — *Held, if the court acts contrary to the role it is expected to play, it will be the destruction of the fundamental edifice on which the justice delivery system stands — Judiciary — Fundamental duty of, Rule of law — Enforcement of — Role of judiciary in — Politically and/or financially influential persons — Enforcement of law against, despite their attempts to coerce/buy witnesses to turn hostile — Held, if the court acts contrary to the role it is expected to play, it will be the destruction of the fundamental edifice on which the justice delivery system stands — Criminal Procedure Code, 1973, Ss. 344, 311 and 391 — Evidence Act, 1872, S. 165*

The complex pattern of life which is never static requires a fresher outlook and a timely and vigorous moulding of old precepts to some new conditions, ideas and ideals. If the court acts contrary to the role it is expected to play, it will be destruction of the fundamental edifice on which the justice delivery system stands. People for whose benefit the courts exist shall start doubting the efficacy of the system. Increasingly, people are believing that laws are like spiders' webs: if some light or powerless thing falls into them, it is caught, but a bigger one can break through and get away. (Paras 22 and 24)

Zahira's role in the whole case is an eye-opener for all concerned with the administration of criminal justice. The criminal justice system is likely to be affected if persons like Zahira are to be left unpunished. Not only the role of Zahira but also of others whose conduct and approach before the inquiry officer has been highlighted needs to be noted. The inquiry officer has found that Zahira could not explain her assets and the explanations given by her in respect of the sources of bank deposits, etc. have been found to be unacceptable. There is no reason to take a different view. Zahira has committed contempt of the Supreme Court. (Paras 18 and 20). *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367: (2006) 2 KLT 350: 2006 Cri LJ 1694.

Bench Strength 2. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 8-3-2006]

Sukhdev Singh Sodhi v. Chief Justice and Judges of the Pepsu High Court, 1954 SCR 454: AIR 1954 SC 186: 1954 Cri LJ 460, clarified

Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409, discussed

— Enforcement of — Witness protection/Prevention of witnesses turning hostile or changing stands — Need for legislative measures to facilitate and ensure *See* CRIMINAL TRIAL — 'Witnesses' — Generally, (2006) 3 SCC 374

— Exercise of executive power/prerogative — Concept of "Government according to law" — To be based on basic principle of fairness and certainty *See* CONSTITUTION OF INDIA, Arts. 161 and 72, (2006) 8 SCC 161

— Fair and open trial *See* CONSTITUTION OF INDIA — 'Article 21' — Fair and open trial, Arts. 21 and 14, (2006) 3 SCC 374

See also JURISPRUDENCE, (2006) 3 SCC 374

— Generally — Award of exemplary punishment in contempt proceedings to high government officials to vindicate rule of law *See* CONTEMPT OF COURT — 'Contempt of Courts Act, 1971', S. 12, (2006) 5 SCC 1

— Equality before the law — Application of principle of *See* CONSTITUTION OF INDIA — 'Article 21' — Right to personal liberty, Arts. 21, 105 and 194, (2007) 1 SCC 70

— Judiciary — Role of *See* JUDICIARY, (2006) 5 SCC 1

— Law enforcement — Knowledge of the law — Relevance *See* CONSTITUTION OF INDIA — 'Article 136' — Scope of interference — General rule of non-interference, Arts. 136 and 141, (2005) 13 SCC 552

— Preservation and strengthening of — Insulating police machinery from political interference *See* POLICE — 'Generally', (2006) 8 SCC 1

— Preservation of — Corruption involving Govt. officers — Monitoring of disciplinary action by Supreme Court *See* CONSTITUTION OF INDIA — 'Article 32' — Public Interest Litigation/PIL, Art. 32, (2007) 1 SCC 136; (2007) 1 SCC 137

— Preservation of — Efficacy and ethics of governmental authorities — Critical role of *See* PUBLIC ACCOUNTABILITY AND VIGILANCE — 'Vigilance Authorities' — CBI, (2007) 1 SCC 110

— Preservation of — Importance of — Law enforcement — Need for, when violations of laws are so extensive that it seems a physical impossibility to remedy the situation *See* CONSTITUTION OF INDIA — 'Article 32' — Exercise of Power — Preservation of rule of law, Arts. 32, 136, 142, 144 and Preamble, (2006) 3 SCC 399

— Preservation of — Transfer of criminal cases of politically influential persons, to area outside their political influence, to ensure fair trial *See* CRIMINAL PROCEDURE CODE, 1973, S. 406, (2006) 1 SCC 314

— Primacy of *See* CONSTITUTION OF INDIA — 'Article 32' — Exercise of power — Power of judicial review, Arts. 32, 226 and 136, (2006) 8 SCC 161

— Primacy of — Conflicts between feudal and/or caste based relationships and entitlements created under the Constitution and the law — Resolution of *See* CONSTITUTION OF INDIA — 'Article 21' — Right to freedom of conscience and expression, Arts. 21, 25, 19(1)(a), 32, 38, 51-A(e) and Preamble, (2006) 5 SCC 475

— Prosecution of people in power/Highly influential political personalities — Non-interference with denial of bail by High Court *See* CONSTITUTION OF INDIA — 'Article 136' — Scope of interference — Interference in criminal matters — Bail denied, Arts. 136 and 32, (2005) 13 SCC 688

— Prosecution of people in power/politicians — Ensuring fair trial *See* CONSTITUTION OF INDIA — 'Article 32' — Public Interest Litigation/PIL, Arts. 32 and 233, (2006) 1 SCC 359

[855] — Supremacy of the law in constitutional democracy, reiterated and emphasised

In our democratic polity under the Constitution based on the concept of "rule of law" which We have adopted and given to ourselves and which serves as an aorta in the anatomy of our democratic system, THE LAW IS SUPREME. Everyone, whether individually or collectively, is unquestionably under the supremacy of law. Whoever he may be, however high he is, he is under the law. No matter how powerful he is and how rich he may be. Any country or society professing the rule of law as its basic feature or characteristic does not distinguish between high or low, weak or mighty. (Paras 3, 4 and 21)

Disobedience of the Supreme Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilised life in the society. That is why it is imperative and invariable that courts' orders are to be followed and complied with. (Para 5). *T.N. Godavarman Thirumulpad (102)* v. *Ashok Khot*, (2006) 5 SCC 1: AIR 2006 SC 2007: 2006 Cri LJ 2773. Bench Strength **3**. Coram: *Y.K. Sabharwal, C.J.* and **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 10-5-2006]

SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

See SCHEDULED CASTES AND TRIBES

SCHEDULED CASTES AND TRIBES

Synopsis

1. Constitution (Scheduled Castes/Tribes) Order, 1950
2. Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989
3. Status as Scheduled Caste/Tribe

1. CONSTITUTION (SCHEDULED CASTES/TRIBES) ORDER, 1950

See CONSTITUTION OF INDIA, Arts. 342(2) and 366(25), (2006) 4 SCC 98

2. SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

— S. 3(2) *See* CRIMINAL PROCEDURE CODE, 1973, S. 378, (2006) 8 SCC 641; Ss. 397, 401 and 378, (2006) 8 SCC 641

[856] — S. 3(2)(v) — Application of — *Sine qua non for, held, is that the offence in question must have been committed against a person on the ground that such person is a member of SC/ST — In the instant case of rape on child below 12 years of age, no evidence led to establish this requirement — Hence S. 3(2)(v), held, not applicable*

The sine qua non for application of Section 3(2)(*v*) is that an offence must have been committed against a person on the ground that such person is a member of the Scheduled Castes and Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not the case of the prosecution that the rape was committed on the victim since she was a

member of the Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(*v*) has no application. (Para 15). *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 28-2-2006]

3. STATUS AS SCHEDULED CASTE/TRIBE

— Only those castes or tribes which are expressly included in the Order can be treated as SCs or STs *See* CONSTITUTION OF INDIA, Arts. 342(2) and 366(25), (2006) 4 SCC 98

SECURITIES, MARKETS AND EXCHANGES

SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES) ACT, 1992

— S. 10 *See* CRIMINAL PROCEDURE CODE, 1973, S. 389(3), (2006) 5 SCC 752

— Ss. 10 & 9 *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 389(3) & (1), (2006) 5 SCC 752

— Ss. 10 and 9(4) *See* SUPREME COURT RULES, 1966, Or. 21 R. 13-A, (2006) 5 SCC 752

SEEDS (CONTROL) ORDER, 1983

See ESSENTIAL COMMODITIES

SEIZURE WITNESS

See CRIMINAL TRIAL — 'Witnesses'

SENTENCE

See CRIMINAL TRIAL

SERVICE LAW

Synopsis

1. Age
2. Banks
   (a) Haryana Cooperative Societies Act, 1984
   (b) Oriental Bank of Commerce Officer Employees (Conduct) Regulations, 1982
3. Criminal Conviction
4. Departmental Enquiry
   (a) Acquittal in criminal trial
   (b) Appreciation of evidence
   (c) Enquiry procedure
   (d) Imposition of penalty/punishment
   (e) Natural justice
5. Disciplinary Action
6. Haryana Civil Services (Punishment and Appeal) Rules, 1987
7. Judiciary
   Kerala Judicial Service Rules, 1991
8. Misconduct
   Penalty/Punishment
9. Penalty/Punishment
   Proportionality
10. Removal from Service

1. AGE

See EVIDENCE ACT, 1872, S. 35, (2006) 5 SCC 584

— Proof of — School-leaving certificate, if on facts *See* EVIDENCE ACT, 1872, S. 35, (2006) 5 SCC 584

2. BANKS

(a) Haryana Cooperative Societies Act, 1984 (22 of 1984)

— Ss. 118 and 123 *See* CRIMINAL PROCEDURE CODE, 1973, S. 197, (2005) 13 SCC 213

(b) Oriental Bank of Commerce Officer Employees (Conduct) Regulations, 1982

— Regn. 3(1) — If on facts violated *See* 'Misconduct' — Penalty/Punishment, below, (2006) 10 SCC 572

[857] — Regn. 3(1) — Object of, restated

Regulation 3(1) of the Regulations, 1982 ensures that every officer at all times takes all possible steps to protect the interests of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and does nothing unbecoming of a bank officer. Such regulations are made to instil public confidence in the bank so that the interests of customers/depositors are well safeguarded. (Paras 18 and 22). *Suresh Pathrella* v. *Oriental Bank of Commerce*, (2006) 10 SCC 572: (2007) 1 SCC (L&S) 224: (2007) 1 SCC (Cri) 612.

Bench Strength **2**. Coram: **H.K. Sema** and *P.K. Balasubramanyan*, JJ. [Date of decision: 19-10-2006]

Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik, (1996) 9 SCC 69: 1996 SCC (L&S) 1194; Regional Manager, U.P. SRTC v. Hoti Lal, (2003) 3 SCC 605: 2003 SCC (L&S) 363; Chairman and MD, United Commercial Bank v. P.C. Kakkar, (2003) 4 SCC 364: 2003 SCC (L&S) 468, followed

3. CRIMINAL CONVICTION

— Effect — Direction by High Court exercising its criminal jurisdiction that conviction of govt. employee will not affect the service career of that employee — Validity of *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 401, 397, 235, 248 and 255, (2006) 10 SCC 509

4. DEPARTMENTAL ENQUIRY

Synopsis

(a) Acquittal in criminal trial
(b) Appreciation of evidence
(c) Enquiry procedure
(d) Imposition of penalty/punishment
(e) Natural justice

(a) Acquittal in criminal trial

[858] — Such acquittal, held, not a bar to disciplinary proceedings against the delinquent — *Difference between the standard of proof in criminal trial and in departmental proceedings restated*

Acquittal in a criminal case would be no bar for drawing up a disciplinary proceeding against the delinquent officer. The yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. (Para 11). *Suresh Pathrella* v. *Oriental Bank of Commerce*, (2006) 10 SCC 572: (2007) 1 SCC (L&S) 224: (2007) 1 SCC (Cri) 612.

Bench Strength 2. Coram: **H.K. Sema** and *P.K. Balasubramanyan*, JJ. [Date of decision: 19-10-2006]

(b) Appreciation of evidence

— **Standard of proof** *See* 'Departmental enquiry' — Acquittal in criminal trial, above, (2006) 10 SCC 572

(c) Enquiry procedure

[859] — **Supply of documents** — *In the absence of any allegation of mala fides, bias or violation of principles of natural justice, non-supply of a document where such omission caused no prejudice to the delinquent, held, did not amount to denial of reasonable opportunity*

The appellant after obtaining adverse statement against him in cross-examination did not further cross-examine *L* by confronting him with the alleged signature of *L*. The appellant accepted the statement of *L*. At the close of the enquiry, the appellant himself requested the enquiry officer to obtain the opinion of a handwriting expert. It was done by him to test the denial of the statement of *L* in cross-examination. The report so obtained confirmed the statement of *L* in cross-examination. No prejudice, whatsoever, was caused to the appellant by non-furnishing of the copy of the handwriting expert. (Para 13). *Suresh Pathrella* v. *Oriental Bank of Commerce*, (2006) 10 SCC 572: (2007) 1 SCC (L&S) 224: (2007) 1 SCC (Cri) 612.

Bench Strength 2. Coram: **H.K. Sema** and *P.K. Balasubramanyan*, JJ. [Date of decision: 19-10-2006]

(d) Imposition of penalty/punishment

[860] — **Statements made by complainant subsequent to imposition of penalty on the delinquent — Not relevant** — *Departmental enquiry against bank officer for misappropriation of a certain amount culminating in removal from service — Subsequent to the passing of the order of removal, the complainant allegedly making a disclosure statement under Ss. 406/420 IPC — Contention of the delinquent that the punishing authority ought to have considered the said statement, rejected — Penal Code, 1860, Ss. 406 and 420. Suresh Pathrella* v. *Oriental Bank of Commerce*, (2006) 10 SCC 572: (2007) 1 SCC (L&S) 224: (2007) 1 SCC (Cri) 612.

Bench Strength 2. Coram: **H.K. Sema** and *P.K. Balasubramanyan*, JJ. [Date of decision: 19-10-2006]

Sohan Singh v. Union of India, (1984) 1 SCC 162: 1984 SCC (L&S) 105; Narinder Mohan Arya v. United India Insurance Co. Ltd., (2006) 4 SCC 713: 2006 SCC (L&S) 840, distinguished

(e) Natural justice

— **Non-supply of documents/Reasonable opportunity** *See* 'Departmental enquiry' — Enquiry procedure, above, (2006) 10 SCC 572

5. DISCIPLINARY ACTION

— **Corruption involving Govt. officers — Monitoring of disciplinary action by Supreme Court** *See* CONSTITUTION OF INDIA — 'Article 32' — Public Interest Litigation/PIL, Art. 32, (2007) 1 SCC 136; (2007) 1 SCC 137

6. HARYANA CIVIL SERVICES (PUNISHMENT AND APPEAL) RULES, 1987

— **R. 2(d)** *See* CRIMINAL PROCEDURE CODE, 1973, S. 197, (2005) 13 SCC 213

7. JUDICIARY

Kerala Judicial Service Rules, 1991

— **R. 7** *See* ADMINISTRATIVE LAW — 'Subordinate/Delegated legislation' — Administrative/Executive instructions/Circulars/Orders/Guidelines/Norms, (2006) 6 SCC 395

8. MISCONDUCT

Penalty/Punishment

[861] — **Propriety — Bank officer — Misappropriation of customer's money by, without causing loss to the Bank, held, nonetheless a misconduct not warranting a lenient view** — *Such an act violated Regn. 3(1) of Oriental Bank of Commerce Officer Employees (Conduct) Regulations, 1982 — Hence, punishment of removal imposed therefor, unless tainted with mala fides or violative of principles of natural justice and prejudicial to the delinquent, held, proper*

Regulation 3(1) of the Regulations, 1982 ensures that every officer at all times takes all possible steps to protect the interests of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and does nothing unbecoming of a bank officer. Such regulations are made to instil public confidence in the bank so that the interests of customers/depositors are well safeguarded. In such a situation the fact that no amount was lost to the bank would be no ground to take a lenient view for the proved misconduct of a bank officer. The appellant acted beyond his authority in breach of the Bank's regulation. It is a case of loss of confidence in the officer by the bank. In such a situation, it would be a futile exercise of judicial review to embark upon the decision of the disciplinary authority removing the officer

from service, preceded by an enquiry, and to direct the bank to take back the officer in whom the bank had lost confidence, unless the decision to remove the officer was tainted with mala fides, or in violation of principles of natural justice and prejudicial to the officer. No such case is made out in the present case. (Paras 18 and 22). *Suresh Pathrella* v. *Oriental Bank of Commerce*, (2006) 10 SCC 572: (2007) 1 SCC (L&S) 224: (2007) 1 SCC (Cri) 612.

Bench Strength **2**. Coram: **H.K. Sema** and *P.K. Balasubramanyan*, JJ. [Date of decision: 19-10-2006]

Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik, (1996) 9 SCC 69: 1996 SCC (L&S) 1194; Regional Manager, U.P. SRTC v. Hoti Lal, (2003) 3 SCC 605: 2003 SCC (L&S) 363; Chairman and MD, United Commercial Bank v. P.C. Kakkar, (2003) 4 SCC 364: 2003 SCC (L&S) 468, followed

9. PENALTY/PUNISHMENT

Proportionality

See 'Misconduct' — Penalty/Punishment, above, (2006) 10 SCC 572

10. REMOVAL FROM SERVICE

— If on facts proper *See* 'Misconduct' — Penalty/Punishment, above, (2006) 10 SCC 572

— Imposition of punishment of — Statements relevant for consideration *See* 'Departmental enquiry' — Imposition of penalty/punishment, above, (2006) 10 SCC 572

SITE PLAN

See CRIMINAL TRIAL

SMUGGLERS AND FOREIGN EXCHANGE MANIPULATORS (FORFEITURE OF PROPERTY) ACT, 1976

See PREVENTIVE DETENTION — 'Particular Statutes'

SOCIAL EVILS AND MALPRACTICES

— Dowry *See* PENAL CODE, 1860, S. 304-B, (2006) 10 SCC 115; Ss. 304-B, 306 and 498-A, (2006) 9 SCC 794

SOLITARY WITNESS

See CRIMINAL TRIAL — 'Witnesses'

SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES) ACT, 1992

See SECURITIES, MARKETS AND EXCHANGES

STATUTE LAW

Synopsis

1. Legal Fiction
2. Mandatory or Directory
3. Presumptions
4. Statutory Power

1. LEGAL FICTION

[862] — Applicability of, cannot be extended for a purpose other than for which it is created

The underlying object in enacting Section 197 CrPC is to protect a public servant from frivolous prosecution. The said provision, however, although may not be construed too narrowly, cannot be interpreted liberally so as to bring within its purview other officers who are not so protected. Section 197, inter alia, protects the public servants. "Public servant" has been defined in Section 21 IPC but the appellant herein does not answer the description of a public servant within the meaning of Section 21 IPC. The salary of the appellant is not paid by the Government. He at the relevant time was not in the service of the State. Prosecution against an officer of a government company or a public undertaking would not require any sanction under Section 197 CrPC. There is a well-marked distinction between a body created by a statute and a body coming into existence and governed in accordance with the provisions of a statute. (Paras 12, 14, 13 and 17)

The appellant also cannot be said to have continued to be a public servant within the meaning of the Haryana Civil Services (Punishment and Appeal) Rules, 1987. The definition of "government employee" in Rule 2(*d*) of the said Rules cannot be extended for purposes other than sought to be achieved thereby. Provisions of the said Rules, therefore, cannot be invoked for affording protection under Section 197 CrPC. (Para 14)

Section 117 of the Haryana Cooperative Societies Act, 1984 enumerates offences. Section 118 limits taking of cognizance of offences which come within the purview of the said Act, as would be evident from sub-section (1) thereof, and not under the provisions of IPC or any other statute. The said provision, therefore, has no application. In terms of Section 123, only an employee who is engaged in the recovery of loans or a person who has been appointed as a liquidator or an arbitrator only shall be treated as a public servant. By reason of the said provision, a legal fiction has been created. A legal fiction, as is well known, is created for a specific purpose and thus, applicability thereof cannot be extended for a purpose other than that for which it has been created. As the Managing Director of Haryana State Cooperative Land Development Bank Ltd., the appellant was not engaged in the recovery of loans or appointed as a liquidator or an arbitrator and in that view of the matter, the limited purpose for which the legal fiction has been created would have no application in the instant case. (Paras 15 and 16). *N.K. Sharma* v. *Abhimanyu*, (2005) 13 SCC 213: (2006) 2 SCC (Cri) 135: AIR 2005 SC 4303: 2005 Cri LJ 4529: (2005) 4 KLT 738.

Bench Strength **2**. Coram: **S.B. Sinha** and *R.V. Raveendran*, JJ. [Date of decision: 7-10-2005]

2. MANDATORY OR DIRECTORY

— **Use of word "shall"** *See* PREVENTION OF CORRUPTION ACT, 1988, S. 17 second proviso, (2006) 7 SCC 172

— **Use of words "no" and "shall"** *See* CRIMINAL PROCEDURE CODE, 1973, S. 197, (2006) 1 SCC 557

3. PRESUMPTIONS

See EVIDENCE ACT, 1872, Ss. 4, 114, 79 to 90-A, 111-A, 112, 113-A, 113-B and 114-A, (2006) 6 SCC 39

4. STATUTORY POWER

— **Time-limit for exercise of** *See* ADMINISTRATIVE LAW — 'Administrative action' — Administrative or executive function — Exercise of Power/discretionary power, (2006) 8 SCC 502

STATUTORY RAPE

See CRIMES AGAINST WOMEN AND CHILDREN

SUPREME COURT

See PRECEDENTS

SUPREME COURT (ENLARGEMENT OF CRIMINAL APPELLATE JURISDICTION) ACT, 1970

— **S. 2** *See* CRIMINAL PROCEDURE CODE, 1973, S. 389(3), (2006) 5 SCC 752

— **S. 2(a)** *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 378 and 386, (2005) 13 SCC 624

SUPREME COURT RULES, 1966

— **Or. 21 R. 8 — Applicability** *See* CONSTITUTION OF INDIA — 'Article 136' — Practice and procedure — Appeals by prisoners, Art. 136, (2006) 11 SCC 174

— **Or. 21 R. 13-A** *See also* CRIMINAL PROCEDURE CODE, 1973, Ss. 389(3) & (1), (2006) 5 SCC 752

[863] — **Or. 21 R. 13-A — Requirement under, that the accused preferring criminal appeal before Supreme Court has to surrender prior to registration of said appeal — Contention that once bail granted by trial court in terms of S. 389(3) CrPC, Supreme Court cannot insist that the accused should surrender in terms of R. 13-A — Sustainability of** — *Per Altamas Kabir, J., held, said contention not sustainable as S. 389(3) CrPC empowers the trial court to release a convicted person on bail only for such period as will afford him sufficient time to present an appeal and obtain orders of the appellate court under sub-section (1) of S. 389 — Grant of bail in appeal presupposes surrender by the convicted person — Provisions of S. 389 CrPC and that of the 1966 Rules are independent provisions and will have to be considered on their own standing — Criminal Procedure Code, 1973, S. 389* (Para 19). *Mayuram Subramanian Srinivasan* v. *CBI*, (2006) 5 SCC 752: (2006) 3 SCC (Cri) 83: AIR 2006 SC 2449: 2006 Cri LJ 3285: (2006) 3 KLT 489.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 16-6-2006]

[864] — **Or. 21 R. 13-A — Requirement under, that the accused preferring criminal appeal before Supreme Court has to surrender prior to registration of said appeal — Nature of** — *Held, is mandatory in character — Said requirement has to be complied with except when an order is passed for exemption from surrendering — Criminal appeals filed under S. 10 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 without surrender of convicted appellants — Held, said appeals must be posted for hearing only after the appellants surrender and file proof in respect thereof before Supreme Court — S. 9(4) of the 1992 Act cannot do away with the requirement stipulated under Or. 21 R. 13-A — Reliance placed by appellants upon earlier orders of Supreme Court was of no consequence as those orders were passed without taking note of effect of Or. 21 R. 13-A — Securities, Markets and Exchanges — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, Ss. 10 and 9(4)* (Paras 7 to 9, 14, 15 and 20)

When the present criminal appeals were placed before the Supreme Court for admission, the office report pointed out that the appellant in each appeal had not surrendered and therefore in terms of the Supreme Court Rules, 1966, the said appeals could not be taken up.

Considering the said objection, the Supreme Court decided as above.. *Mayuram Subramanian Srinivasan* v. *CBI*, (2006) 5 SCC 752: (2006) 3 SCC (Cri) 83: AIR 2006 SC 2449: 2006 Cri LJ 3285: (2006) 3 KLT 489.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 16-6-2006]

T.N. PREVENTION OF DANGEROUS ACTIVITIES OF BOOTLEGGERS, DRUG-OFFENDERS, FOREST-OFFENDERS, GOONDAS, IMMORAL TRAFFIC-OFFENDERS, SLUM-GRABBERS AND VIDEO PIRATES ACT, 1982 (14 OF 1982)

See PREVENTIVE DETENTION — 'Particular statutes'

TIME OF DEATH

See CRIMINAL TRIAL

TORT LAW

1. DAMAGES/COMPENSATION

— **Deprivation of love and affection — Rs 20,000 awarded by Tribunal in respect of the same, upheld** *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', S. 168, (2006) 6 SCC 249

— **Quantum — Determination of — Factors to be taken into consideration, enumerated — Multiplier method explicated** *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', S. 168, (2006) 3 SCC 242; S. 168 and Sch. II, (2006) 6 SCC 249

2. NEGLIGENCE

— Defences — Contributory negligence — Effect *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 166 and 173, (2005) 13 SCC 694

— Defences — Contributory negligence — Inference of, if justified on facts *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', S. 168, (2006) 3 SCC 242

— Proof — Res ipsa loquitur — Applicability *See* LABOUR LAW — 'Departmental/Domestic enquiry' — Enquiry procedure, (2006) 8 SCC 52

TRAFFICKING

See CRIMES AGAINST WOMEN AND CHILDREN

TRANSFER OF PROPERTY ACT, 1882

[865] — S. 58 — Equitable mortgage — Creation of, by depositing documents other than title deeds — Validity and permissibility — *Held, not valid or permissible — Such mortgage is created by depositing original title deeds — Property Law — Mortgage — Equitable mortgage — Proper mode of creation of* (Paras 26 and 27). *R. Janakiraman* v. *State*, (2006) 1 SCC 697: (2006) 1 SCC (Cri) 442: AIR 2006 SC 1106.

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 4-1-2006]

[**Ed.**: *See also* (1964) 6 SCR 727, where a mortgage by deposit of title deeds has been distinguished from an equitable mortgage.]

U.P. CHILDREN ACT, 1951 (1 OF 1952)

See CHILDREN ACTS

U.P. GENERAL CLAUSES ACT, 1904

See GENERAL CLAUSES ACTS

U.P. POLICE REGULATIONS

See POLICE

UNIVERSITIES

1. RAGGING

[866] — Suggestion made for setting up of committee to look into problems of ragging in educational institutions and remedial measures in respect thereof — *R.K. Raghvan, ex-Director, CBI suggested as head of the committee — Ministry directed to give its view. University of Kerala (2)* v. *Council, Principals', Colleges*, (2006) 8 SCC 486: (2006) 3 SCC (Cri) 537.

Bench Strength **2**. Coram: *Arijit Pasayat* and *Lokeshwar Singh Panta*, JJ. [Date of decision: 6-11-2006]

2. RECOGNITION

See CONSTITUTION OF INDIA — 'Article 14' — Nature and Scope — Ingredients, Art. 14, (2006) 4 SCC 65

VAKALATNAMA

See PRACTICE AND PROCEDURE

VIGILANCE AUTHORITIES

See PUBLIC ACCOUNTABILITY AND VIGILANCE

WITNESSES

See CRIMINAL TRIAL

WORDS AND PHRASES

— **"beneficial interest", "floating charge" and "fixed charge"** *See* PROPERTY LAW — 'Hypothecation', (2006) 6 SCC 736

— **"Cause of action"** *See* CONSTITUTION OF INDIA — 'Article 226' — Articles 226 and 227, Arts. 226 and 227, (2006) 3 SCC 658

[867] — "Cause of action" — Meaning of — Question whether the cause of action in the subsequent suit is identical with that in the first suit — Mode of determination of

The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person. (Para 14)

"Cause of action" consists of a bundle of facts, which give cause to enforce the legal inquiry for redressal in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise. (Para 11)

The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, the aforesaid expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in "cause of action". (Para 12)

The rule is directed to securing the exhaustion of the relief in respect of a cause of action and not to the inclusion in one and the same action or different causes of action, even though they arise from the same transaction. One great criterion, when the question arises as to whether the cause of action in the subsequent suit is identical with that in the first suit is, whether the same evidence will maintain both actions. (Para 16). *Om Prakash Srivastava* v. *Union of India*,

(2006) 6 SCC 207: (2006) 3 SCC (Cri) 24: (2006) 131 DLT 557.

Bench Strength 2. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 24-7-2006]

— **"charge-sheet", "final report"** *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 170, 169 and 173(2), (2006) 4 SCC 359

— **"cognizance"** *See* CRIMINAL PROCEDURE CODE, 1973, S. 197, (2006) 1 SCC 557

— **"cognizance", "issuance of process"** *See* CRIMINAL PROCEDURE CODE, 1973, Ss. 190, 193 and 195 to 199 & 204, (2006) 6 SCC 728

— **"Consent"** *See* PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — 'Against her will' and 'without her consent', Ss. 375 Secondly & 90 and 376, (2006) 11 SCC 615

— **"Fair trial" — Meaning of** *See* CONSTITUTION OF INDIA — 'Article 21' — Fair and open trial, Arts. 21 and 14, (2006) 3 SCC 374

[868] — **"Fight"** — *Held, is a combat between two and more persons whether with or without weapons* (Para 11). *Lachman Singh* v. *State of Haryana*, (2006) 10 SCC 524: (2007) 1 SCC (Cri) 123: AIR 2006 SC 2763: 2006 Cri LJ 4041.

Bench Strength 2. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 28-7-2006]

— **"Fight"** *See* PENAL CODE, 1860, S. 300 Exception 4, (2006) 7 SCC 391

— **"Fight", heat of passion", "sudden quarrel"** *See* PENAL CODE, 1860, Ss. 300 Exception 4, 302 & 304 Pt. II, (2006) 4 SCC 653

— **"Gratification" — Meaning** *See* PREVENTION OF CORRUPTION ACT, 1988, Ss. 8 and 9, (2007) 1 SCC 1

— **"Habitually"** *See* PREVENTIVE DETENTION — 'Detention order' — Application/Non-application of mind, (2006) 6 SCC 14

— **"Hazardous", "lethal weapon" — Meaning of** *See* PREVENTION OF TERRORISM ACT, 2002, Ss. 4(a) and (b), (2006) 1 SCC 314

— **"Imprimatur" — Meaning of** *See* CONTEMPT OF COURT — 'Contempt of Courts Act, 1971', S. 2(b), (2006) 11 SCC 114

— **"Income", "travelling allowance"** *See* PREVENTION OF CORRUPTION ACT, 1947, S. 5(1)(e) r/w S. 5(2), (2006) 1 SCC 697

— **"Incuria", "per incuriam"** *See* PRECEDENTS — 'Per incuriam decision', (2006) 5 SCC 752

— **"Interested witness"** *See* CRIMINAL TRIAL — 'Witnesses' — Related witness, (2006) 4 SCC 512

— **"Judgment"** *See* HIGH COURTS — 'Letters Patent of Calcutta High Court', Cl. 15, (2006) 5 SCC 399

— **"Jurisdiction to punish for contempt"** *See* CONTEMPT OF COURT — 'Contempt of Courts Act, 1971', Ss. 19, 10 & 11, (2006) 5 SCC 399

— **"Modesty", "modesty of a woman"** *See* PENAL CODE, 1860, S. 354, (2006) 8 SCC 560

— **"Normal discrepancies", material discrepancies** *See* CRIMINAL TRIAL — 'Appreciation of evidence' — Contradictions, inconsistencies, exaggerations or embellishments, (2006) 10 SCC 601

— **"Obscenity"** *See* CONSTITUTION OF INDIA — 'Article 19' — Article 19(2) — Reasonable restrictions, Art. 19(2), (2007) 1 SCC 143

— **"Official", "official duty"** *See* CRIMINAL PROCEDURE CODE, 1973, S. 197, (2006) 1 SCC 557

[869] — **Words "offence", "offend", "illegal", "punish", "punishment" and "punishable" — Meaning of — Explained** — *General Clauses Acts — General Clauses Act, 1897, S. 3(38) — Foreign Exchange Regulation Act, 1973, Ss. 68, 50, 51 and 56 — Penal Code, 1860, Ss. 40 and 43*

The word "offence" is not defined in the Act. According to *Concise Oxford English Dictionary*, it means, "an act or instance of offending". Offend means, "commit an illegal act" and illegal means, "contrary to or forbidden by law". According to *New Shorter Oxford English Dictionary*, an offence is "a breach of law, rules, duty, propriety, etiquette, an illegal act, a transgression, sin, wrong, misdemeanour, misdeed, fault". Thus, An offence only means the commission of an act contrary to or forbidden by law. It is not confined to the commission of a crime alone. It is an act committed against law or omitted where the law requires it and punishable by it. In its legal signification, an offence is the transgression of a law; a breach of the laws established for the protection of the public as distinguished from an infringement of mere private rights; a punishable violation of law, a crime, the doing that which a penal law forbids to be done or omitting to do what it commands. The expression "offence" as defined in Section 3(38) of the General Clauses Act means an act or omission made punishable by any law for the time being in force. (Para 29)

"Punishable" is ordinarily defined as deserving of, or capable or liable to punishment. "Punish" means, "inflict a penalty on as retribution for an offence, inflict a penalty on someone for (an offence)". Punishment is "infliction of a penalty in retribution for an offence; penalty imposed to ensure application and enforcement of a law". It is the penalty for transgressing the law. (Para 29). *Standard Chartered Bank* v. *Directorate of Enforcement*, (2006) 4 SCC 278: (2006) 2 SCC (Cri) 221: AIR 2006 SC 1301: (2006) 127 DLT 747: (2006) 197 ELT 18.

Bench Strength 3. Coram: *Y.K. Sabharwal, C.J.* and *C.K. Thakker* and **P.K. Balasubramanyan**, JJ. [Date of decision: 24-2-2006]

[870] — **Word "penetrate" — Dictionary meaning referred to** — *Crimes against women and children — Rape — Ingredients of rape* (Para 12). *Tarkeshwar Sahu* v. *State of Bihar (Now Jharkhand)*, (2006) 8 SCC 560: (2006) 3 SCC (Cri) 556.

Bench Strength 2. Coram: *S.B. Sinha* and **Dalveer Bhandari**, JJ. [Date of decision: 29-9-2006]

— **"Presumption"** *See* EVIDENCE ACT, 1872, Ss. 4, 114, 79 to 90-A, 111-A, 112, 113-A, 113-B and 114-A, (2006) 6 SCC 39

— **"Proved", "disproved"** *See* NEGOTIABLE INSTRUMENTS ACT, 1881, Ss. 118(a) and 138 & 139, (2006) 6 SCC 39

— **"Public order"** *See* CRIMINAL PROCEDURE CODE, 1973, S. 197, (2006) 1 SCC 294

— **"Punishable" — Meaning** *See* CRIMINAL PROCEDURE CODE, 1973, S. 167(2) proviso (a), (2006) 6 SCC 277

— **"Rape"** *See* PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — Generally, S. 376, (2006) 3 SCC 771

— **"Reasonable grounds" — Distinguished from prima facie satisfaction** *See* CRIMINAL LAW — 'Particular Statutes' — Maharashtra Control of Organised Crimes Act, 1999 (30 of 1999), S. 21(4), (2007) 1 SCC 242

— **"Undue advantage"** *See* PENAL CODE, 1860, S. 300 Exception 4, (2006) 4 SCC 653

— **"Voluntary consent"** *See* PENAL CODE, 1860 — 'Sections 375 and 376 — Rape' — 'Against her will' and 'without her consent', Ss. 376 and 375 Secondly, (2006) 11 SCC 615

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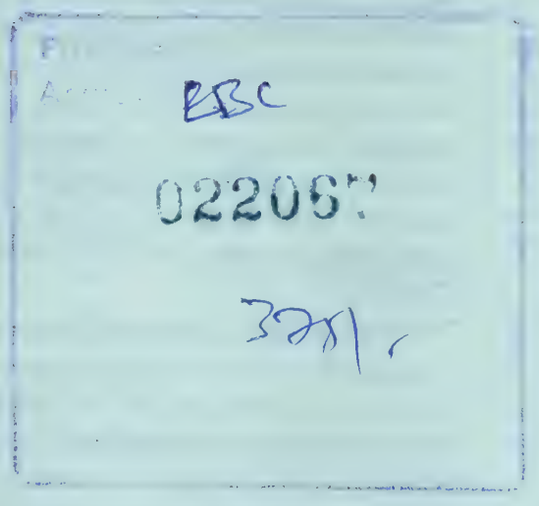

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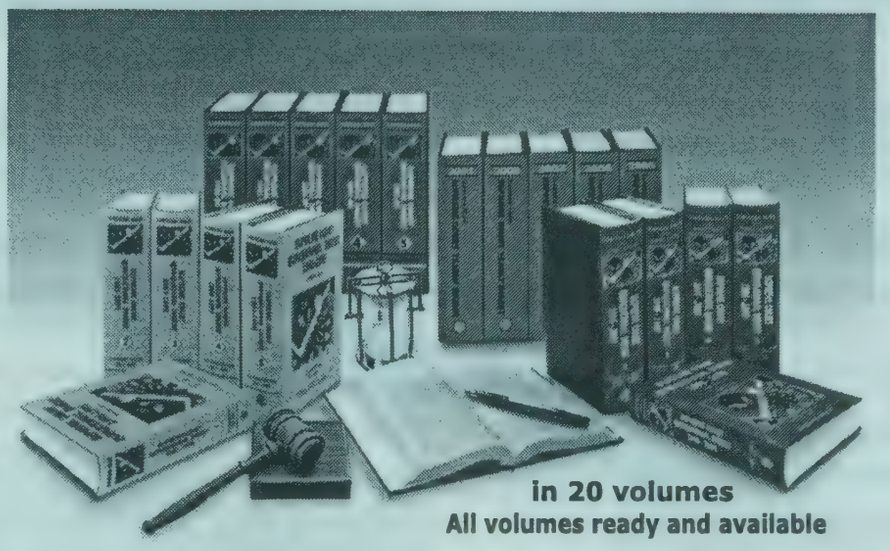

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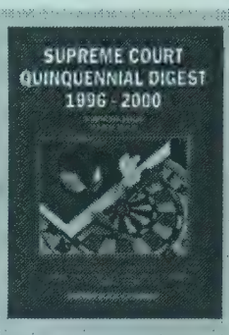

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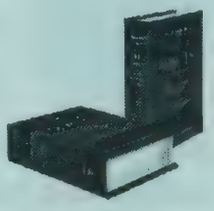

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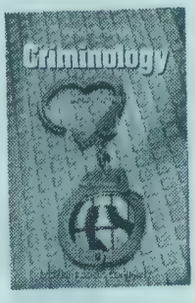

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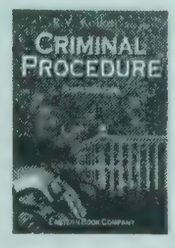

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